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IOWA
HISTORICAL
LECTURES.

DELIVERED BEFORE THE
STATE HISTORICAL SOCIETY,
IOWA CITY.

1892.

IOWA CITY, IOWA:
PUBLISHED BY THE SOCIETY.

1893.

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STATE HISTORICAL SOCIETY OF IOWA.



N INFORMAL organization was recognized by the Sixth General Assembly, January 28th, 1857, by an annual appropriation of five hundred dollars. The Eighth General Assembly, March 26th, 1860, repeated the appropriation of 1857, with the sole condition that the society be formed "in connection with, and under the auspices of, the State University."

November 6th, 1867, "The Iowa State Historical Society" was duly incorporated "for the purpose of collecting, embodying, arranging and preserving, in authentic form, a library of books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary and other materials, illustrative of the history of the State of Iowa; to rescue from oblivion the memory of its early pioneers—to obtain and preserve narratives of their exploits, perils, and hardy adventures; to secure facts and statements relative to the history, genius and progress or decay of our Indian tribes; and also to exhibit faithfully the antiquities, the past and present resources of Iowa."

The act of incorporation designated the following officers:

President: Col. W. Penn Clark.

Vice-Presidents: Robert Hutchinson, E. Price, Judge W. E. Miller, Z. C. Luse, John L. Davis, Prof. T. S. Parvin.

Corresponding Secretary: Sanford W. Huff, M. D.

Recording Secretary: S. E. Paine.

Treasurer: Prof. H. G. Welton.

Librarian: C. Frank Clarke.

Curators: Col. S. C. Trowbridge, Hon. John P. Irish, Prof. N. R. Leonard, Wm. Vogt, M. D., F. H. Lee, James R. Hartsock, Samuel J. Hess, Frederick Lloyd, M. D., Wm. H.

Tuthill, N. H. Brainerd, Hon. G. W. McCleary, Henry Murray, M. D., Wm. Crum, W. C. Gaston, G. W. Dodder, M. W. Davis, Hon. George G. Wright, Gov. Ralph P. Lowe.

The term of office, at first for one year, was changed at a later date to two years, and of the eighteen curators nine are now elected by the Society and nine are appointed by the Governor. The business of the Society is virtually conducted by the elected curators.

The Twelfth General Assembly April 7th, 1868, made a special appropriation of three thousand dollars a year for the biennial period, and required "the delivery to the Society of eighty bound copies of all books and documents published by order of the State for the purpose of effecting exchanges with similar Societies in other States and for preservation in the library of the Society."

In later years the number of volumes thus placed at the disposal of the Society has been greatly reduced as the Legislature has provided for a wider distribution without increasing proportionately the number of copies published and bound.

January, 1870, the Society was compelled to seek suitable quarters for its library as the University authorities found themselves unable to spare the room. Additional expense was thrust upon the Society without any increase of the annual appropriation of five hundred dollars received since 1857.

The Eighteenth General Assembly increased the annual appropriation to one thousand dollars.

The Twenty-Fourth General Assembly made a special appropriation of five hundred dollars each year for two years for purposes of publication and binding.

COLLECTIONS.

1. A library consisting of United States and State publications; of historical publications of other States received in exchange; of valuable contributions by private individuals; of a few rare volumes to be obtained only by purchase; and of publications of the Smithsonian Institute, and of other

societies—the whole numbering over fifteen thousand volumes.

2. State newspaper files bound and numbering nine hundred volumes.

3. Battle Flags of Iowa Regiments, Confederate flags captured by Iowa regiments.

4. Museum—curiosities historic and otherwise, more than five thousand articles.

5. Photographs and sketches of prominent characters of Iowa—such as could be obtained by gift.

SOCIETY PUBLICATIONS.

1. Twelve volumes of the *Annals of Iowa*. The publication was suspended for want of funds the last of 1875.

2. January, 1885, the publication was resumed under the new title of *Iowa Historical Record* of which the seventh volume was completed October, 1891. Edition limited.

LECTURES.

1. Two lectures delivered previous to those published herewith—one by Hon. Henry Clay Dean, and one by Rev. Dr. William Salter.

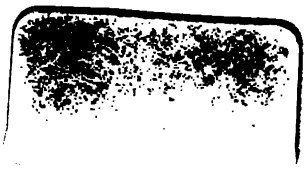
At the biennial meeting of the Society June, 1891, it was determined to inaugurate courses of lectures during the winter months so far as the funds at our command would warrant. The first course consisted of four lectures given without compensation by residents of Iowa City.

1. *Prehistoric Iowa*, Prof. SAMUEL CALVIN, of the State University.

2. *Indian Tribes in Iowa*, J. L. PICKARD, President of the Society.

3. *The Louisiana Purchase*, C. M. HOBBY, M. D.

4. *The Introduction of the Common Law into Iowa*, E. McCLAIN, LL.D., Chancellor Law Department of the State University.



PREHISTORIC IOWA.

BY PROFESSOR SAMUEL CALVIN, OF THE STATE UNIVERSITY.

Delivered December 1st, 1891.



THE subject assigned to me by the committee that arranged this course of lectures assumes that there was an Iowa before men began purposely to make historical records, and the assumption is not without ample justification. For long before men learned either to carve or write, here was Iowa. At least this beautiful tract of land that we now call Iowa was here. In the course of things it must have been here before men occupied it, before there was anyone, therefore, to witness, much less to record the ongoing of local events. Indeed it may easily be shown that Iowa's broad acres, "fair as a garden of the Lord," spread from river to river before a human foot had pressed the surface of the planet anywhere. And in those far-away times of which ordinary history in the nature of things can make no mention, seasons rolled by the same as now with all their attendant coming and going of generations of plants and animals. Summer suns shone much as they did in this year of grace, 1891. Spring brought its flowers and autumn its leafy glories. The struggle for life, which is as old as the appearance of life upon the world, was here yearly carried to the final issue. Man at last joined the struggle, and long before there were any historians, events of historical importance were enacted within the limits of Iowa.

You may say that all this sounds very well, but if there was a prehistoric Iowa, and if events that historians neither

witnessed nor recorded took place within its borders, how is it possible for us to know anything about them? There are records, be it remembered, that are not made by historians, not made by any human hands in many cases, or if so made are wholly independent of design or purpose to perpetuate a knowledge of what is taking place; and yet these records are as clear, as intelligible, as trustworthy, and convey information respecting events as significant and important as any that historian ever penned. To illustrate what I mean, and at the same time to elucidate the methods whereby records relating to prehistoric events have been made and are now deciphered, let us suppose the simple case, that a horse walks along some unfrequented path and leaves the prints of his feet in the yielding soil. No human eye we will suppose saw the animal as it walked along the path so that it is impossible to get direct human testimony concerning the event. Soon an intelligent person passing that way discovers the tracks. He wastes no time in debating the question whether those impressions in the clay are mere accidental freaks of nature. There is but one rational way to account for them and being a rational man he at once reaches the conclusion that an animal of the only kind that ever makes such tracks could alone be responsible for them. The direction in which the creature was going is very clearly told, whether it was walking or running is also recorded, and if a shoe had been lost the fact is expressed in unmistakable terms. The length of time since the animal passed may also be approximately known. The marks we will say are fresh; they were made since the last shower. The disturbed clay has dried but little since the tracks were made; they are less than an hour old. Thus may we have a record conveying information respecting a series of facts and circumstances that tells its story in a manner as clear, straight-forward and convincing as if it were supported by the testimony of a thousand human witnesses. The manner in which such a record is interpreted illustrates the methods of science in general. They are methods that

are the necessary outcome of trained observation and common sense applied to natural phenomena. They are methods based upon the belief that Nature's operations are uniform, and that all phenomena, relating to material things at least, must be referred to natural causes that are known to be competent to produce them.

When a beautifully finished arrow point is taken from the soil, the possibility of its being the result of accident, of the ordinary action of the forces of attrition and solution that shaped the pebbles with which it is associated, of the influence of the stars, or of some occult process of fermentation in the soil, or that it simply grew, or had always possessed the form we see and needed no becoming or fashioning, is not entertained for a moment. On the contrary, any person with the smallest possible degree of training in the observation of such objects, will at once refer it to the activity of the only agent known to be capable of producing articles requiring purposeful and skillful manipulation in their manufacture. It must be admitted after all that there may be persons who choose to believe that that arrow point was produced through the agency of unintelligent forces acting without purpose or design. If there be such person entertaining such belief, I know of no way by which he can be convinced to the contrary. No living person saw the object made. Nor has any person seen any person who saw any one who saw it made. We are wholly without human testimony in respect to its manufacture. Nevertheless science would assert in very positive terms that at some time in the past history of the world some human brain designed the object and some human hand fashioned it into shape. If hoof prints and arrow points were produced in different ways, by different agents, now in this way and now in that, sometimes shaping themselves spontaneously without any assignable cause, then there would be an end to making scientific deductions so far as they are concerned.

The arrow point may have been made in times usually called

prehistoric; but it is itself an historical record, though all undesignated for such purpose, and tells in unequivocal terms that the region had human occupants at the time it was made. At the same time it bears witness to the degree of civilization or uncivilization that these human occupants had reached. The state of manufactures among such people together with their mode of pursuing game and conducting warfare may at least be inferred. Thus the finding of a single genuine prehistoric arrow point may enable us to write up an important chapter in the history of a people that no historian ever saw, and concerning whose existence there is not even the shadow of a human tradition.

The recovery of the weapons of a prehistoric people sheds important light on their character and habits, but when, as is often possible, we may add the knowledge gained by exploration of their homes and hearths, their shrines and sepulchers, we are in a position to write up somewhat fully the portion of their history which deals with their daily occupations and their domestic life.

There are many records that tell of other facts than the mere presence of human occupants in a region such as Iowa. Vegetable remains for example preserved in peat bogs or in the mud that accumulated at the bottom of ancient ponds and lakes, enable us to reconstruct the prehistoric forests. With such vegetable remains are usually found bones of the animals that lived in the forests. Human weapons or human skeletons are often there too. And so from records preserved in peat bog and lake bed, science may rehabilitate in a general way the prehistoric landscapes, and may see them enlivened with multitudes of struggling creatures, man among the rest, all bent on accomplishing the two great objects for which living things below the higher planes of humanity seem to strive,—namely, “to eat and to escape being eaten.”

Not only may we restore the forests in the shadow of which prehistoric man lived, we may know the very size and habits of the animals that roamed through those forests; those that

prowled at night and those that sought their food in the open day; those the man chased and those from which in turn he fled; and we may go even farther and determine the climatic conditions under which all this assemblage of animal and plant life existed.

Need I say that the method by which science, after picking up such threads and fragments of history, is led to those confident conclusions to which it gives expression, is not anything that is peculiar to science? It is simply the method of Zadig, made famous by being quoted by Professor Huxley and turned so aptly to account in illustrating what he is pleased to call *Retrospective Prophecy as a Function of Science*.¹ It is based on the same assumptions which you and I employ in conducting our daily business. As pointed out so well by Huxley these same assumptions regulate the humblest domestic affairs as well as the great concerns of commerce and finance. They lie at the foundation of all our confidence in the truth of written history. They constitute the basis of our confidence too that there will be a to-morrow, in which men will have the same needs and, under the same circumstances, will perform the same acts as we observe or experience to-day. They are also the basis of our belief in a long succession of yesterdays reaching back for centuries beyond the limits of our individual experience. These assumptions take it for granted that the phenomena of nature, including the phenomena of the human mind, are now, and always have been, and always will be, controlled by unvarying laws; that in short the same things occur in the same order of succession under the same circumstances. Science differs from ordinary pursuits in the fact that it busies itself in accumulating by observation and experience a knowledge of natural events and of the circumstances under which these events take place.

Let us proceed then after this introduction, altogether too long, to set forth the conclusions to which we are led by

¹ *Popular Science Monthly*, Vol. XVII., p. 467.

applying Zadig's method to the interpretation of the records that deal with prehistoric Iowa. And at this point I feel greatly embarrassed with the question of where to begin. For choose what point of time I will I am immediately confronted with the fact that there stretches back beyond that time what, speaking with some license, may be called a series of geologic eternities during which events were taking place that contributed in greater or less degree to making Iowa what it is to-day.

The first information we have respecting prehistoric Iowa is derived from geologic records. These records, untampered with and unimpeachable, declare that for uncounted years Iowa, together with the whole great valley of the Mississippi, lay beneath the level of the sea, and so far as it was inhabited at all, marine forms of animals and plants were its only occupants. During these long years of submergence the rocky strata of Iowa, as well as of all the adjacent States, were successively accumulated as soft sediments on the sea bottom. Omitting the small area of Sioux Quartzite in Lyon county, the oldest strata in the State are the limestones and sandstones of the northeastern part of Iowa. These contain the record of a period of duration altogether incomprehensible.¹ Myriads of years, if not myriads of centuries, pass again and in the meantime the light colored limestones so well represented at Anamosa grow by imperceptible sedimentary accretions.² Other ages of similar duration drag on slowly into the lengthening past, but bring us only to the point at which the limestones and shales represented in Johnson county are completed.³ About this time a small portion of Iowa in the northeast becomes dry land, but all the region to the south and west of where we stand was still held under the dominion of the all-pervading sea. Odd-shaped fishes on one hand and relatives of ferns on the other mark the high-

¹ Cambrian and Lower Silurian strata.

² Upper Silurian strata.

³ Devonian strata.

est points reached in the evolution of animal and plant life. Another of those ages, to human comprehension limitless, but which to the mind of science divides up geologic time into enormous segments, wends slowly by, and the agents of sedimentation build up in slow succession the great crinoidal beds at Marshalltown, Burlington and Keokuk, together with the coal measures and associated strata of central, southern and southwestern Iowa.¹ Still Iowa and the rest of the world are without human occupants. Some progress is making, however. Not so much among plants, for among them nothing much better than ferns has been produced; but among animals we have at the close of this time some air-breathing creatures that deserve to rank with the crocodile and the alligator.

Soon after the completion of the coal measures the sea, which during the preceding ages had been gradually withdrawing to the south and west, left our whole State as a part of the growing continent, and it might seem that the discussion of prehistoric Iowa should begin at this point. But crocodiles and alligators are not especially adapted to cut what one might call dignified historic figures, and so the events relating to this portion of prehistoric time in Iowa may be left without further notice.

"The whirligig of time" may as a figure of speech, correctly typify the rapid mutations that take place in connection with human affairs, but it would be altogether inapt if applied to the stately movements of geologic periods. Geologic revolutions there were, but they would be better represented by the steady and majestic movements of the outer planets around the sun, or of the sun itself around the center to which it owes allegiance. After one or two more of these great revolutions, the world advanced to a condition in which birds had come to enliven the groves with their songs, and a few small rat-like creatures, related to the opossum of the

¹ Subcarboniferous or Mississippian strata and the Coal Measures representing the Carboniferous Age.

southern States, represented the highest type of vertebrates. There were some wonderfully formed reptiles too at this time, but any reference to them is aside from our purpose. About this time too there were forests trees much like those of our modern forests.¹ While all these things were developing out of conditions that existed at the close of the coal age, Iowa was dry land; but the sea again takes possession of at least the northwestern half of the State, and another geologic period goes by before the upward movement of the land carries the shore line out beyond our present borders.

And now with this upward movement Iowa is at length permanently disenthralled from the dominion of the sea. Forests of a very pronounced modern type take possession of the surface. Animals related to the dog, the wolf and the panther as well as to the deer, the camel, the ox and the horse unite with lizards and birds and bats and monkeys to impart a modern aspect to the assemblage of animals that occupied this latitude. The climate was that of southern Louisiana. The conditions were not inconsistent with the possibility of man's existence. They seem indeed to have been particularly favorable, and yet, so far as the records show, man at the beginning of this new period, was not only absent from Iowa, but was absent still in every quarter of the globe.

Let us note the course of events from this point on to the beginning of historic time a little more closely. For the sake of clearness we will follow the usage of geologists and call the era at which we have now arrived the *Tertiary*. During the Tertiary period then, as has been already said, Iowa was part of the land area that made up the half formed continent of North America. The drainage of the State must have been much the same as now, although the altitude above sea level was a few hundred feet less than at present.

¹ Compare the index to Lesquereux's *Cretaceous Flora*, Report of U. S. Geol. and Geog. Survey of the Territories, Vol. VI., with a list of genera in our modern forests.

The Mississippi river ran in a channel not far from the one it now occupies, and its waters were poured into a gulf that extended up as far as the mouth of the Ohio. The Missouri was a much shorter stream than at present because the region, now traversed by the Upper Missouri and its tributaries was occupied by a series of great lakes. Tertiary lakes occupied large parts of Nebraska and may have drained into the Missouri. Other Tertiary lakes were found in Utah and Nevada, but none, so far as has been discovered, existed in Iowa.

Now what have Nebraskan and Dakotan lake beds to do with prehistoric Iowa? Why simply this: The mud swept down from the adjacent slopes and settling on the bottom of the lakes covered up the leaves and branches of trees and the bones and teeth of animals. In this way we have laid away for perpetual preservation, samples so to speak of the various forms of life that occupied the lake shores at the time the sediments were accumulating. These old lakes have long been drained and the hardened sediments exposed to the action of the atmosphere and all the agents it sets in motion. That in some cases the lakes were filled to the surface with mud would be literally true. Modern streams are now cutting their way through the old mud beds. The surface of the sediments is undergoing continual degradation through the effects of erosion. The remains of the entombed animals and plants are being laid bare and little by little we are learning what they were. Such beds, remember, are the only places of any importance where records of Tertiary plants and animals were kept. From such only do we get information on which to base conclusions respecting Tertiary climate. Tertiary lake beds or Tertiary ocean beds are the volumes in which the records of Tertiary phenomena were inscribed. Now the conditions that prevailed in Nebraska and Dakota were not so unlike those that obtained here, so that in the absence of Tertiary lake beds in our own State we may turn with confidence to the records preserved in the old lakes of Nebraska and Dakota for information regarding Tertiary Iowa.

According to these records there were luxuriant forests in this latitude ranging west into what is now occupied by arid regions. Mingled with the more familiar oaks and poplars and hickory trees were the magnolia, the cinnamon, the fig and the palm. In northern Dakota and even away on into British America these subtropical forms were found growing on the slopes that drained into the Tertiary lakes. The southern cypress, in all probability adorned as is its present habit with pendent tassels and fringes of swaying gray moss, stood spectral like in all the great marshes even far north of the latitude of Iowa. At present we have two species of Sequoia, the big red woods or giant trees of California. One of these is confined to a few isolated points on the western slopes of the Sierra Nevadas, the other to the western side of the Coast Range. During the Tertiary there were numerous species, and these seem to have been very widely and generally distributed.¹

If the Tertiary forests seem strangely out of place in the latitude of Iowa, what shall we say of the animals that ranged through these forests in quest of food or shelter or concealment? At the beginning of the Tertiary the animal types were so different from those familiar to citizens of Iowa in this nineteenth century that any reference to them may well be omitted. Imagine, however, a series of geologic revolutions to pass with all their leisurely grandeur, sweeping successive groups and types of animals to extinction, and introducing others that, speaking generally, successively approximate our modern types in structure, and let us imagine ourselves at a point of time near the middle Tertiary. The animals are strange enough yet, but at length we have evidence of the existence of some that may at least be readily compared with the modern species.

¹ Consult Report on the U. S. Geol. and Geog. Survey of the Territories, Vol. VII., *The Tertiary Flora*, by Leo Lesquereux. See also Vol. VIII. of same series by same author.

To begin with there were creatures allied to the opossum, so nearly like the little marsupial of the south, that we might be justified in speaking of them as opossums. In our modern North American fauna we have but one species of this type. In the fauna of the middle Tertiary there were not less than twelve. Creatures that played the part of squirrels, busied themselves among the branches and foliage of the trees, while an army of small beavers were employed in cutting brush and making dams along all the smaller streams, and grovelling gophers burrowed in the soil. Among hoofed animals were some we might be permitted to call rhinoceroses, others were manifestly related to the South American tapir, and with these were curious creatures that may be looked upon as the proper predecessors if not the ancestors of the tribe of swine. There were also species related to the deer, there were other species that were almost camels or llamas, one group of species forshadowed the modern ox, and some erratic looking creatures with three toes and three hoofs on each foot pass themselves off as Tertiary horses. Among the curiosities of the time was a ruminating or a cud-chewing hog as described by Leidy, that combined in a single species characters that belong respectively to the hog, the camel and the deer. Carnivorous mammals were well represented by a host of dog-like prowlers that varied from the size of a small fox to creatures larger than the largest wolf. There was a whole family of short-jawed species that were intermediate between the dog and the panther, and possessed of cruel, sharp, trenchant teeth. *Nimravus* is the name given by Cope to one of them, the ancient progenitor of Nimrods, the mighty hunter of the middle Tertiary. There were also true cats or panthers, one of which, called *Machairodus*, is usually referred to by geologists as the *Saber-toothed Tiger*. The size of its skeleton and the flattened sharp-edged, saber-like canine teeth indicate an animal stronger and more cruel than the dreaded tiger of southern Asia. Secure amid the leafy branches and chattering defiance in the very face of the saber-tooth and all

his hungry kindred were groups of agile monkeys belonging to a number of species.¹

Such is an imperfect review of the forests and the fauna of this region during the Tertiary. Nothing has been said of the bright-winged birds that flitted back and forth in the open glades or amid the shadowy recesses, nor of certain larger birds with bones twice as strong as those of the ostrich and wholly unfitted for flight. Neither have we mentioned the curious turtles, nor the snakes, nor lizards that crawled and crept among the fallen leaves or basked in sunshine on some half submerged log or stone, nor can we describe the insects that furnished food for numerous bats, or left their bodies to be buried in accumulating amber.

I know that it is simply a groundless fancy but the picture that rises before me when I think of Tertiary Iowa is that of a fair land bathed in mellow sunshine and covered in whole or part with forests of tropical luxuriance. These forests give shelter to a marvellously diversified assemblage of animals endowed with equally diversified activities, but at the distance from which the scene is viewed, the animal activities are wholly unobtrusive, each of the multitudinous creatures accomplishing its purposes without haste, without worry, without noise. A dreamy stillness pervades the shimmering air. The gray moss droops listlessly from the bare arms of the bald cypress. The very branches and leaves of the foliage trees seem to be listening for sounds that never come. A somnolent land it seems that for untold centuries enjoys perpetual afternoon.

The real picture was doubtless very far from being as peaceful as my unchecked fancy paints it. Clouds alternated

¹ For descriptions and illustrations of Tertiary Mammals see papers of Prof. Leidy in *Smithsonian Contributions*, in Owen's *Report on the Geology of Wisconsin, Iowa and Minnesota*, and in the publications of the Philadelphia Academy of Science. See also memoirs on the subject of the Tertiary Fauna in the reports of Hayden, King, and Powell of the U. S. Geological Survey. Important papers by Cope are found in the *American Naturalist*, and others by Marsh in *American Journal of Science*.

with sunshine, and storms at intervals swept across the face of the land. Animals waged fierce battles among themselves. Daily recurring hunger created perpetual unrest, and the ferocity of the carnivorous tribes begat in all the others an ever present fear, an unremitted vigilance.

In time the long sweep of geologic revolutions brings the Tertiary era to its close. Before it closes, however, animals have assumed more and more a modern aspect. For example there are one-toed horses that the casual observer might not readily distinguish from some of our wild species. The deer, wolf, bear, fox, rabbit, and a long list of others of the later Tertiary present only very slight differences from animals we call by corresponding names to-day.

From the beginning to the close of the Tertiary, as far as the records show, climatic conditions were practically uniform over long stretches of time. They seem also to have been uniform over regions embracing many degrees of latitude. There were Tertiary forests in southern Greenland in most respects similar to the forests of Dakota and Montana.


The Quaternary or Pleistocene era follows the Tertiary, and with its ushering in there begins a new and strange chapter in the history of Iowa. Previously Iowa had been basking in sunshine and revelling in all the luxuriance of tropical conditions. But now a change takes place whereby all climatic favors are withdrawn and the fair face of Iowa becomes a scene of unimaginable desolation. The climate is rigorous. Precipitation is copious. Snow falls during long, bleak, dreary winters, much beyond what can be melted in the short, cool summers; and so year by year, and century by century the snow is piled higher and higher until, by the pressure of its own weight and the freezing in its mass of percolating waters that come from summer rains or surface melting, it is converted into a solid sheet of glacier ice.

Looking at the records from this distance of time it seems as if the transition from Tertiary luxuriance to Quaternary desolation had been somewhat sudden. But the change must

have occupied thousands, if not hundreds of thousands of years. A few thousand years more or less do not count for much in geologic reckoning. Whatever the length of time employed, the change was as extreme and complete as that which one would experience, if transported to-day from southern Florida to central Greenland. Iowa was only a small part of the region in which similar changes occurred. The area reached from beyond the Missouri river to the Atlantic ocean, and from the latitude of St. Louis northward to the pole. Indeed the climate of the whole continent of North America underwent profound modification.

The history of Quaternary Iowa would begin therefore with a long period of transition during which the climate is gradually depressed, and plants and animals either suffer extinction or migrate year by year farther and farther south. The process of refrigeration goes on until, as already said, the piled up snows are compacted into glacier ice that covers Iowa with a mantle probably thousands of feet in thickness. One of the known properties of ice causes it, when in large masses, to behave like a viscous or semi-fluid body. It flows; flows as water flows, but much more slowly. Bodies of flowing ice are called glaciers. Glaciers always flow outward from the center of accumulation where the ice is thickest towards the thinner portions. These thinner parts are usually the margin of the ice sheet; the glacier terminus it may be called; for all glaciers that do not reach the sea end more or less abruptly at the point where equilibrium is established between the amount of ice flowing in, and the amount that is melted in the same region.

The great ice sheet that covered Iowa had its terminal margin at times south of St. Louis. But there were many oscillations in the severity of the cold and the amount of precipitation so that the margin would sometimes retreat and sometimes advance from century to century. Whether the margin retreated or advanced the great body of ice was perpetually moving outward from the center of accumulation,



grinding over the underlying rocks, crushing them into fragments and grinding the fragments often into finest powder. Fragments, frequently of enormous size, were caught in the lower portion of the flowing ice and carried bodily forward, dragging along over the rock strata of the surface traversed by the ice stream, grinding the strata into rock flour, and being themselves worn and planed and grooved on their lower surface. Slow as was the movement of the glaciers there was time enough to transport some erratic fragments from native ledges in British America and strew them broadcast over the surface of Iowa. All the granitic boulders, and all boulders of crystalline rocks of any kind, scattered over the surface of Iowa, were carried into the State from the north by means of the great Quaternary ice sheet. To be strictly correct I should use the last word in the plural and say ice-sheets. There is abundant evidence that Iowa was invaded by glaciers at least twice, and that the two glacial periods were separated from each other by a long interval of comparatively mild climate during which deglaciation laid bare the whole country probably as far north as Hudson Bay. It was during the first invasion that the ice flowed over the whole State, and beyond our southern boundary down to the latitude of St. Louis. During the second invasion the southern ice margin was exceedingly sinuous and irregular, but on the average its greatest southern extension did not reach beyond the middle of Iowa. The line of greatest advance is marked by a series of gravelly ridges and knolls that are very conspicuous in Cerro Gordo, Wright, Polk and some adjacent counties.¹

The melting of the glaciers was attended by a series of phenomena conspicuous among which were flooded rivers

¹ Consult Prof. Wright's *Ice Age in North America*; *The Driftless Area in the Upper Mississippi Valley* by Chamberlin and Salisbury in *Sixth Annual Report of U. S. Geol. Survey*; *The Terminal Moraine of the Second Glacial Epoch* by T. C. Chamberlin in *Third Annual Report of U. S. Geol. Survey*; and recent Papers by McGee, Upham and other authors. See also Vols. I. and II., *Geological and Natural History Survey of Minnesota*.

whose waters, thick and turbid, carried loads of detritus that was strewn along the course of the channels or carried far beyond the most southerly limit reached by the ice. During some phase of the melting process there was deposited at Iowa City as well as at scores of other localities, this well known *Loess* or yellow clay that is convertible in wet weather, as all have had experience, into fathomless beds of stiffest, stickiest mud, and in seasons of drought is reducible to finest dust that whirls into the air on the slightest provocation. Furthermore there is evidence that during the period of melting the country was re-occupied by plants and animals that successfully pushed their stations up to the very margin of the retreating ice. In the Alps and other glacial regions plants and animals maintain themselves without inconvenience in close proximity to the ice fields, so that the presence of organisms of high rank in Iowa pressing hard upon the footsteps of retreating glaciers need excite no surprise. This point in the history of Iowa deserves especial notice, for there are reasons to believe that with this incursion of animals from the south to hold and occupy what the glaciers were compelled to abandon, man came and for the first time set foot within the limits of our State. Prof. Aughey's discovery of arrow points in undisturbed beds of Loess at different points in Iowa and Nebraska, would indicate the presence of man in close proximity to the foot of the melting glaciers.¹ The rude implements of human make found by Dr. C. C. Abbott in the Quaternary gravel along the Delaware near Trenton, New Jersey, show that man was present about this time on the eastern border of our continent. In Oregon, Nevada and Utah are certain old lake sediments in which were buried the remains of an assemblage of animals that constitute what is known as the *Equus Fauna*. This fauna as set forth by Cope

¹ Hayden's Report on U. S. Geol. and Geog. Survey of Colorado, etc., 1874, p. 255. Since the lecture was written Prof. F. M. Witter reports the finding of arrow points in the Loess at Muscatine, Iowa. *American Geologist*, Vol. IX., p. 276.

embraces a number of extinct species, among which was a gigantic sloth-like animal, an otter, an elephant, two kinds of horses, three species related to the llamas or alpacas of South America, and an extinct deer. Besides these there were modern gophers, the modern beaver and the modern prairie wolf. The fauna is an old fashioned one. Cope is inclined to regard it as belonging to the later Tertiary, but Gilbert, Russell and McGee show that without doubt it must be referred to the Quaternary, that in fact it follows the glacial period. Now it is a point of wonderful interest that man was a part of that old *Equus* fauna. Human implements are found in undisturbed *Equus* beds. At the late meeting of the Geological Society in Washington,¹ Prof. Cope exhibited a skull of one of these extinct horses. The skull had the frontal bones crushed in a way that could be explained only on the supposition that the animal had been deliberately slaughtered with one of the rude hammers that are found in the beds from which the skull was obtained. Man was not only present as a part of the *Equus* fauna, but it would seem that he had learned how to conquer the horse and utilize its body as food. There were Quaternary horses in Iowa as shown by Foster,² and the museum of the State University contains portions of skeletons of a number of Iowa elephants belonging practically to the same species as that found in the *Equus* beds of Oregon and Nevada. The early men of Iowa and Oregon contended for supremacy with the same rivals. It is an interesting coincidence that over in Europe Quaternary man entered the valleys of France and Belgium immediately after the withdrawal of the glaciers and had for contemporaries, among a host of other creatures, a horse, and an elephant that was identical with the species that roamed over Quaternary Iowa and Nevada. The Quaternary horse, of Europe was also utilized for human food, and numerous crushed skulls embedded in the ashes and charcoal of the ancient hearths

¹ August, 1891.

² *Prehistoric Races of the United States*, p. 90.

attest the high esteem in which the brain was held as a tooth-some delicacy.

Over in California there has accumulated, and there is still accumulating, a mass of evidence which makes it seem necessary to accord to man on this continent an antiquity higher than the middle Quaternary.¹ The facts briefly are these: Before the Sierra Nevadas were occupied by glaciers, and while yet a fauna including rhinoceros and other late Tertiary forms occupied the region, the rivers had cut deep gorges in the mountain sides and had strewn along their channels bars and beds of gravel. These gravels were rich in gold as were the more modern bars and gravel beds of rivers of the same region in '48 and '50. Bones of the Tertiary animals were frequently buried in the old gravels, and at the same time were buried hand-made implements and human skeletons. After all this had been going on for unmeasured centuries the region, hundreds of miles in extent, became the theater of a series of world-making or at least world-modifying convulsions. Lava was poured out from scores of fissures and piled up to a depth of hundreds or even thousands of feet, choking up the old river beds and burying out of sight the gravels with all their gold and all their entombed remains of men and animals. Since then the rivers of the region have found new channels, cutting them gradually by ordinary process of wear down through refractory lava beds and down into the hard crystalline rocks of which the mountains are constructed, to a depth in places of two thousand feet below the level of the older channels. Since then, too, glaciers accumulated on all the mountain tops to unknown depths and went flowing down the mountain sides plowing out channels and scooping out enormous valleys. After accomplishing an incredible amount of work the glaciers waned, died, became extinct; and now glaciated valleys with their heaps of glacial rubbish and with floors and sides characteristically scored and planed, attract

¹ See Bulletin of Geol. Society of America, Vol. II., p. 189.

attention from even the most untechnical tourist. To-day man is energetically following the courses of the prehistoric river channels in quest of gold, tunnelling under the lava beds and bringing to light not only the gravels with their glittering contents, but the bones of the Tertiary mammals and the human skeletons and human implements that were buried there long before the glaciers that once occupied the region were born, before even the lava floods had turned the rivers aside from their original beds. Whatever may be the true interpretation of the records preserved in the prehistoric river channels of California, it is quite certain that we have no evidence of the existence of man in Iowa, or anywhere in the Mississippi valley, earlier than the middle Quaternary.

What sort of man was it that first inhabited Iowa? The fact is gradually taking shape in the minds of archæologists that there are remains of at least two prehistoric races in the Mississippi valley. In order that we may appreciate intelligently the peculiarities of the earliest of these races let us consider for a moment the famous Neanderthal skull. It resembles the skull of the gorilla in the enormously thick stout ridges over the eyes, while the low grade of intelligence of its owner is indicated by the almost total absence of a forehead. This anomalous skull was found in 1857, and was for years regarded as marking probably some individual peculiarity and not as representing a distinct human type. At the late meeting of the International Congress of Geologists in Washington,¹ Mr. Max Lohest exhibited drawings and descriptions of human skulls of the Neanderthal type, from Liege, Belgium. Similar skulls are now known from France, Italy, Austria, Belgium and Sweden, and everywhere the conditions and surrounding circumstances indicate that they are the oldest of known human fossils. The fact that there was a low-browed, brute-like, small-bodied, square-shouldered, Neanderthal race of men must be regarded as fairly established.

Turning now to our own continent, we find a parallel series

¹ September, 1891.

of facts of unusual interest. Mr. M. W. Davis, of this city, has in his possession a skull from a mound in Johnson county that is almost of the Neanderthal type. It differs simply in having the superciliary ridges a little less prominent than in the old European race, and the arch of the skull is not quite so flat. A skull from Floyd, north of Charles City, Iowa, exhumed and described by Mr. Webster, is quite as anomalous as any known from Europe, and if found in Europe would be at once referred to the Neanderthal race. Three other skulls found by Mr. Webster at Old Chickasaw, exhibit the same racial characteristics. Three skulls of similar contour, from the region of Dubuque, Iowa, are mentioned and one illustrated in Foster's *Prehistoric Races of the United States*. Still others are described by Foster from Illinois and Indiana. Referring to one from a mound near Chicago he says, "No one I think can view this fragment of a skull, with the superciliary ridges projecting far beyond the general contour, both laterally and in front, and the low, flat forehead with its thick bony walls, without coming to the conclusion that its owner was a ferocious brute."

Dr. Lapham, author of *Antiquities of Wisconsin*, was at one time quite skeptical concerning the existence of a low-browed, ape-like race of men in America, and was even inclined to believe that the mounds had been heaped up by ancestors of the modern Indians. His observations led him to change his opinions, and later he could write to his friend Foster concerning two prehistoric skulls preserved at Milwaukee that, "The peculiar characteristics indicating a low grade of humanity common to both, are a low forehead, prominent superciliary ridges, the zygomatic arches swelling out beyond the walls of the skull, and especially the prominence of the occipital ridge. The anterior portion of these skulls, besides being low is much narrowed, giving the outline, as seen from above, of an ovate form."¹ The same Neanderthal type, it will be

¹ *Prehistoric Races of the United States*, by J. W. Foster, LL.D., p. 290. Skulls of this same degraded type to the number of a dozen or more are preserved in the collection of the Davenport Academy of Science.

seen, inhabited Wisconsin. America has furnished a larger number of skulls of this type than has Europe. The race may indeed have originated here and the low-browed American may have been the ancestor of the man of Neanderthal. We know that Euproe received its prehistoric horses from America. Why may it not also have received its earliest prehistoric men in the same way? After the horse had been long extinct on this continent—the continent in which it had its origin—and after the Neanderthal type of men had disappeared from every quarter of the globe, Europe repays its debt with added interest by stocking this great continent again with domestic horses, and peopling it with an improved ethnic race represented in our own community by the Saxon, the Teuton and the Celt.


The Neanderthal race of Europe lived, some of them at least, in caves, and caves became in many instances their places for burial. The equivalent race in America occupied a region destitute of caves. Their habits, like those of all other races, were determined largely by their environment. What kind of homes they reared we may never know. In the matter of burial they adopted the simple fashion of piling heaps of earth over the bodies of their dead. Whether this inferior type of humanity was displaced by another, or whether in the course of time it developed into something better would be difficult to say; but it is quite certain that a higher race followed, constructing mounds on a much grander scale and of more elaborate patterns. Dr. Lapham clearly expresses the probable course of events when he says, "It seems probably that men with skulls of this low grade were the most ancient upon this continent; that they were the first to heap up those curiously shaped mounds of earth which now so much puzzle the antiquary; that they were gradually superseded and crowded out by a superior race, who adopting many of their customs continued to build mounds and to bury their dead in mounds already built."

It seems to me that archæologists take too little account of

the fact that a superior race may be lineally descended, or perhaps you would prefer to say that they may have lineally ascended, from an inferior one. Theoretical biology affirms that the ancestors of every race, our own proud ancestors among the rest, if we could only trace our line of descent back far enough, were men as low in grade and with skulls as flat, as the most brutish individual among the men of Neanderthal. The reverse is also possible, and a race of superior intelligence may, by a process of retrogression or degredation, give rise to descendants of very inferior quality. Fluctuations in the intelligence of a single prehistoric race might, judging from the monuments made at different times, lead to the conclusion that a region had successively been occupied by tribes of people racially distinct. Major Powell, Mr. Henshaw and others incline to the opinion that all mounds and their contents are to be attributed to ancestors of the modern Indian. If that can be proved no one will object. From one point of view we would have evidence simply of the successive occupation of Iowa and the Mississippi valley by three successive races; from another point of view the monuments would record three distinct phases of civilization of the same race. The question as to which view is the true one may be left without discussion until our information is more complete.

Whatever may be the genetic relations of the peoples that successively occupied America, this fact stands out prominently, that following the low-skulled men, and prior to the phase of civilization of which, at the time of Columbus, the modern Indian was the exponent, the country was occupied by an intelligent race that lived in settled, organized communities, and heaped up elaborate mounds of earth to which they often gave very perfect geometric outlines. These were the true *Mound Builders*.

The monuments of the mound builders are confined almost exclusively to the Mississippi valley; and are scattered all the way from the Gulf of Mexico northward into Wisconsin.




The center of this population, and the center of its culture and civilization as well, seems to have been in the valley of the Ohio, along the Wabash, the Sciota and the Miami on one side, and the Cumberland and the Tennessee on the other. If asked to locate the center more definitely we would place it near Chillicothe, or Marietta, Ohio. From this center the race extended into adjacent States, a portion of it occupying eastern Iowa. Iowa, however, seems to have held the position only of a remote frontier province, sparsely settled with rude pioneers that fell as far short of representing the real state of civilization attained at the center of population, as Iowa in the early 40's would have fallen short of representing the highest degree of culture and progress attained by the Anglo-Saxons.

The mound builders cleared forests and must have practiced agriculture on an extensive scale; they wove cloth; they graded roads; they built extensive and skillfully planned fortifications often embracing scores or even hundreds of acres; they made stone implements, but finding copper better for their purpose they sent annual expeditions to Lake Superior to carry on extensive mining operations in quest of this metal. As a rule the copper was hammered into knives and hatchets and bracelets, and other objects, but in some instances they seem to have known how to cast it into the desired shape. There appears to have been no McKinley among them, to conceive the idea of developing the tin mines of America, and so they missed the art of making bronze. Their water jars and water coolers were moulded by hand into artistic forms often representing portions of the human body or of lower animals. Effigies of fishes, reptiles, birds, quadrupeds and even the human form were skillfully carved in stone. The elephant pipes in the museum of the Davenport Academy of Science, which have been ridiculed by some persons high in authority, are to me in no way surprising. The men who made the arrow points found by Professor Aughey were here as early as the earliest elephants that followed close upon the

retreating glaciers, and elephants were prominent among the animals inhabiting Iowa and adjacent regions for a long stretch of time subsequent to their first appearance. Man was associated with the same species of elephant at the time the *Equus* beds were forming in Nevada. He was associated not only with the elephant, but with forms belonging to even older faunas in California. The evidence of man's contemporaneous existence with this same species of elephant in Europe has for many years been such as to preclude the possibility of doubt.

For a long time too after the elephant became extinct in this region another elephant-like creature, the mastodon, roamed in herds over the Mississippi valley, our State included, and must have been familiar to many generations of prehistoric men. The artists that carved birds and smaller quadrupeds so skillfully that even the genus and species represented may often be accurately determined, could hardly have failed to attempt the more ambitious subject of the elephant or the mastodon. The only wonder is that effigies of these striking creatures are not more common.

The earth works constructed by the mound builders are their most characteristic monuments. These vary from shapeless heaps of earth barely rising above the level of the surrounding surface, to great cones or pyramids, fifty, sixty, ninety feet in height. One, the great truncated pyramid at Cahokia, Illinois, has a height of ninety feet and a circumference at the base of more than two thousand feet. But of their mounds, or embankments, or strategically planned fortifications, or temples, or sacred enclosures, or sepulchers, it is not my purpose to speak. My object has been to describe prehistoric man no farther than was necessary to fix the proper relations of successive prehistoric events. Regarding the glacial period as the portion of time around which discussions relating to prehistoric man must center, I have tried to set forth its relations to preceding and subsequent eras. I have tried also to have you see that however long or however



short the time since the close of the glacial period, man has during all that time continuously occupied this continent, that in fact men of some grade of intelligence and some shade of color have, since the glacial period, continuously occupied Iowa. Furthermore man has been here as long as he has been in Europe; and the question whether America received its human population from the eastern continent, or the eastern continent from America would not now be answered off hand as it would have been twenty years ago. The facts I have presented are such as may be ascertained by pursuing what we may call the geologic method. The gentlemen who will follow me in this course of lectures will carry forward the discussion of events affecting Iowa by methods belonging more particularly to the historian, the philologist and the comparative ethnologist, and into their hands it gives me great pleasure, at this point, to turn the subject over.

IOWA INDIANS.

BY DR. J. L. PICKARD.

Delivered January 8th, 1892.



THOSE of you who accepted the guidance of Prof. Calvin were entranced by the star-lit ocean whose waters once rolled over this vast valley; were surprised to see islands rising slowly about your course and upon them a magnificent flora; were enraptured as glistening ice fields reflected the dim lights of the heavens from their pure white surface; were glad to see under warmer skies the streams of sweet fresh water flowing from receding glaciers with a new flora and fauna furnishing shelter, food, and clothing for a low-browed and low-statured race of human form who hunted within the forests and close upon the borders of the iceland, using the rudest instruments of attack with the vigor known only to brutish men.

In the ages that followed a civilized people moved northward, leaving their records in the ruins of magnificent temples which abound in Central America and in Mexico; in pyramids like the one at Cholula, rivalling in size those of Egypt; in mounds of various sizes and forms, some of which yield evidence of great artistic skill in fashioning instruments of silver, copper, and of stone—evidence too of a worshipful spirit within the breasts of the artists as upon the skeletons are found crosses of both Roman and Greek form.

Temples, pyramids and mounds show the highest degree of civilization within the tropics shaded more and more deeply towards the poles until it is lost among the Esquimaux in the North and the Patagonians in the South.



Centuries intervene and yet buried in such oblivion as that no trace appears of the tides of red men flowing in from the Northeast and the Northwest, crowding back even to their destruction the partially civilized mound builders.

That these mound builders did not leave their fair lands without a contest is proven by the ruins of extensive fortifications along the streams of this great Mississippi valley. Sixty miles back from Lake Michigan in the beautiful Rock River region of Wisconsin, at the village of Aztalan (Aztecland?) is a ruined fortification covering thirty acres in area whose walls were of burnt brick. Similar mounds and evident fortifications are found in northern and eastern Iowa.

Whence came these northern barbarian hordes that crowded in between the Esquimaux and the more civilized tribes that pressed northward after the ice age? No man is authorized to answer this question. Traditions even are vague. From the heaven direct; from the earth; from the water under the earth; from some far away region undefined; from Asia by Behring Strait; from Europe by Iceland, Greenland and Labrador; from Africa when the continents were joined before the time so briefly recorded in sacred writ. — "In his days" (days of Peleg) "was the earth divided,"¹ "and from thence" (the plains of Shinar where the tower of Babel was begun) "did the Lord scatter them abroad upon the face of all the earth."² These traditions give rise to various theories — theories free to your choice.

That the red men are here we know, and that they are yielding to another race, as themselves forced others to yield in centuries long past, is proven beyond a doubt. Icelandic records leave no room for doubt that in the ninth century Norsemen fleeing from Harald's tyranny reached Iceland, that in the tenth century their descendants landed upon the shores of Greenland, and that within the first three or four years of the eleventh century they passed by Labrador and

¹ Gen. x, 25.

² Gen. xi, 9.

Nova Scotia to Cape Cod and into Narragansett Bay to the mouth of the Taunton river where stood for a time a Hof, or Hop—called Mount Hope more than six centuries later where King Philip's tribe of Indians were found when English settlements were made in Massachusetts.¹

To discover is more than to find. The Norsemen found America; only Columbus discovered it, lifting the veil of darkness which hid it, and disclosing it to Europe.

Of the period between 1004 and 1492, little is known of North America.

By discoverers from the St. Lawrence Gulf to the Caribbean Sea, and inward as far as hardy adventurers penetrated, red men were found and were treated ever as uncivilized men to be dispossessed of their lands as the several nations discovering saw fit.

The acquisition of title by discovery was recognized as valid, each nation respecting the other's rights. The red men could yield possession to national authority, but could not dispose of lands to individuals without national consent.

Relating to the titles of land acquired by treaties with Indian tribes, Chief Justice Marshall in case of *Johnson & Graham's lessee v. William McIntosh*,² gives the decision of the Supreme Court:

"The plaintiffs claim the land under two grants, 1773 and 1775, by chiefs of Illinois and Piaukeshaw tribes. The chiefs acted under authority of tribes who were acknowledged in rightful possession of the land they sold. On the discovery of this continent the great nations of Europe eagerly sought possession of as large a share as possible; to avoid conflicts they agreed upon discovery as giving right to ownership. They easily convinced themselves that sufficient compensation was given the Aborigines in civilization and christianity bestowed upon them and in unlimited independence.

¹ Bancroft's History of U. S., 16th Ed., 1858. Vol. I., p. 5.

² Wheaton's Reports U. S. Supreme Court, Vol. VIII., p. 543.

"Each nation pursued its own policy with the natives without interference from others.

"Each nation claimed unlimited title and the right to grant lands subject to Indian occupancy. * * * *

"In 1783, the United States obtained title from England subject to the same Indian right of occupancy which Great Britain had recognized.

"A conquered people must either be treated as a subject people or be incorporated into the conquerors as part and parcel thereof. The relation of the Indians to the United States is peculiar. They are not foreign to each other. Indians must be wards of the nation—their lands separate from the state's—and the government controls all intercourse with them. Their right of occupancy was subject to treaty—any lands held in possession by Indians could be alienated by them to the government or to individuals with approval or consent of the government, but the individual can not acquire title *direct* from the Indians."

This decision has determined the conduct of Indian affairs by the United States.

French traders acting under the principles of national ownership extended their tours up the St. Lawrence; English traders, from the Atlantic coast; Spanish traders, from the Florida coast and the Gulf to the Mississippi, and from the Pacific coast inward. The trade consisted largely in furs and fish, the most valuable in the colder regions; hence most is known of the great family of Indians called *Algonquins* in the northeast and of the equally numerous family called *Dakotahs* or *Sioux* in the northwest as known in the earlier days.

Missionaries followed, in some instances accompanied, the traders; in some instances combined the two offices. To these missionaries we owe the knowledge of the tribes that concerns us especially at this time. The two great families met in conflict upon the territory between Lake Michigan and the Missouri river.

Another large family known as *Iroquois* were holding lands


within the territory claimed by *Algonquins* and they were therefore in constant conflict.

English and French too came into conflict, and into their quarrels the Indians were drawn. From the earliest history, until the treaty of 1763, when France surrendered her claims to territory east of the Mississippi, there were found French Indians and British Indians. The two great families—the Algonquins and the Iroquois divided in allegiance; some tribes of each family were found upon opposite sides and carried on incessant warfare. By degrees English influence gained the ascendancy and the French Indians transferred their allegiance to the English side. During the period from 1680 to 1763, the larger part of the Algonquin family thus changed sides. Prominent among them and in order named, Pottawattamies, Foxes and Sacs, who are known in Iowa history, deserted the French.

A word or two is needed as to Indian organization. Nations are divided into tribes and are known only in tribal organization except when tribes join themselves in confederacies as in the case of the Six Nations of the Iroquois family.

Tribes are divided into clans, each clan having its characteristic animal as its designation. The number of clans in a tribe is an even number; eight, as in the Fox tribe; twelve, as in the Sac tribe. Clans are made up of lodges, each lodge with husband, wife or wives (for Indians are polygamists) and children. The husbands of a clan are all known as brothers, the wives are sisters and the children recognize each of the brothers as *father*, and each of the sisters as *mother*; hence there are no cousins, no nephews, no nieces known among them. Descent, for obvious reasons, follows the female line. Marriages are always outside of the clan, but generally within the tribe.

Children are sometimes apportioned among the clans at their birth. Among the Sacs there existed a division two-fold, and children born within the tribe were marked with black or white alternately so as to have an equal number in



each division whenever friendly contests were engaged in of strength or skill.

Over tribes *chiefs* are placed sometimes hereditary — sometimes by election. Braves who have distinguished themselves in war are made *war chiefs*. Thus it happens that two or more chiefs are found in the same tribe.

Tribes sometimes are divided when numbers are large, either by a vertical division, which puts into the new tribe part of each of the clans, or by horizontal division taking all of part of the clans — or by combination of the two methods.

Tribes unite also permanently as Sacs and Foxes, each retaining its chiefs and its braves, but with one superior chief to whose command the united tribes are subject — as the “Six Nations,” under Red Jacket. The union is often temporary — an offensive or defensive alliance, as under King Philip in 1675; Pontiac in 1763; Tecumseh, 1812; Black Hawk, 1832; Sitting Bull, 1891.

The better to present what is the special purpose of this lecture, I shall follow the history of the several tribes each by itself.

Until the organization of the territory of Iowa our fortunes were allied first with those of Michigan, then with those of Wisconsin, and in this latter period our boundaries were from the Missouri line to the St. Peter's river. Over this territory roamed the various tribes of the great *Sioux* family, chiefly *Sissetons*, *Ioways*, *Winnebagoes*, *Osages*, *Otoes*, *Missouris* and *Omahas*; also of the *Algonquin* family tribes known to Iowa history as *Sacs*, *Foxes*, *Illinois*, *Pottawattamies*, *Ottaways* and *Chippeways*.

Proceeding somewhat in detail as proposed and following a chronological order as far as possible in sketching the occupancy of Iowa Territory, but carrying forward each tribe from its first known appearance until its departure across the Missouri river, illustrating all movements by rudely colored maps,¹ I will give in a body the authorities studied, viz:

¹ The maps are not obtainable, except the outlines of the one representing the Black Hawk purchases found at end of the lecture.

Catlin, Schoolcraft, Fulton, Davis, Bancroft, Prescott, McKenney and Hall, Perkins and Peck, Helen Hunt Jackson, the biographers of Tecumseh, of Black Hawk, and of Keokuk; Reports of the Bureau of Ethnology; various magazine and newspaper articles, and the text of Indian treaties up to the admission of Iowa as a State.

The first tribe seen by white men upon Iowa soil was the

ILLINOIS.

1673.—Marquette and Joliet in descending the Mississippi saw, about sixty leagues below the Wisconsin river, footprints in the sand, and following them found a village of Illinois about six miles back from the river, probably near Montrose in Lee county, on the Des Moines river.

1765.—Pontiac surrendered and

1769.—was assassinated by an Illinois. Then began a war of extermination of the Illinois by Pontiac's followers—among them as chief, Sacs and Foxes. By 1803 extermination was nearly completed. When completed a band of Ioways was found among the Illinois, but so friendly to Sacs and Foxes that they entered into alliance and were fast friends for nearly twenty years.


SIoux.

1680.—Father Hennepin found Sioux in northern Iowa and what is now southern Minnesota. He with two others was held a prisoner for five months, and formed the acquaintance of Du Luth.

Schoolcraft thinks them to be of Asiatic origin; they are of seven bands though confederate. They are bitter enemies to Chippeways who are looked upon as encroaching upon their rights in the rich hunting grounds of Wisconsin, Minnesota and Iowa.

For the same reason they were hostile to Sacs and Foxes though less disturbed by them.

Their hostility extended also to Winnebagoes and Ioways who had seceded from them.



1812.—The Sioux espoused the cause of Great Britain and at the close of the war, treaties of peace were made with the Lake Sioux and with St. Peter Sioux. 1816, Sioux of the Leaf entered into treaty.

1825.—Boundary line was established between them and Sacs and Foxes and Ioways, also treaties of peace were made with Hankpapa Sioux. (See Map.)

1830.—The Sioux ceded to the United States a strip of land twenty miles north of the line of 1825, from the Des Moines river to the Mississippi river, receiving in part payment a tract for half breeds, fifteen by thirty-two miles on Lake Pepin. (See Map.)

The Ioways, Omahas and Otoes for themselves and in behalf of Yankton Sioux obtained also a half breed tract ten by twenty miles, west of the Missouri river, between the Great and Little Nemaha rivers.

1836.—Sioux ceded in concert with Otoes and Missouris and Omahas the lands between Missouri river and the State of Missouri, south of the Iowa line. (See page 46.)

1837.—They ceded all lands east of the Mississippi river and islands in the river.

To all these treaties the Sisseton Sioux paid no heed. They acted as outlaws and were so considered by other Sioux. They kept a constant warfare with the Pottawattamies after their removal from Lake Michigan to Southwest Iowa and until they left the State. From 1848 to the Spirit Lake Massacre of 1857, these "Bedouin Sioux" were a source of constant dread, and they will be found troublesome in the future as in the past. Sitting Bull's death has led to a temporary cessation of hostilities.

Efforts are made to civilize them. Missions and schools among them make but little headway.

In care for their dead they differ from the Algonquin family and they cherish a less sacred regard for the resting place of their ancestors. Their dead are placed upon scaffolds.

Other tribes of Sioux with which we are especially con-

cerned—Ioways and Winnebagoes—have yielded more readily to civilizing influences.

IOWAYS—(*Aiouez, Fr.*)

There is a tradition among the Ioways that many generations before the coming of the French, they were upon Lake Pepin, and that Winnebagoes, Omahas, and Missouris were offshoots from the tribe.

Manhaugaw, the ancestor of Mahaska, belonged to the Nez Perces who were found at Mackinac, 1680.

A descendant of Manhaugaw about this time founded a village near the mouth of the Iowa river.

1690.—They were found with Winnebagoes upon Lake Michigan.

1700.—A part of the tribe was found by Le Sueur in the Blue Earth region. They seem to have allied themselves with Winnebagoes.


1775.—A body of Ioways was found with Shawanoes, Delawares, and Mingoes, on the Ohio river during Dunmore's war. This band was found later among the Illinois near Peoria.

The main body descended the Rock river with Winnebagoes, and thence to the mouth of the Des Moines, up that river stopping sometime in Davis, Wapello, and Van Buren counties, thence up the Des Moines, across Iowa to the Missouri river, and up the Missouri to Mandan village.

1786.—Returning they passed down on the west side of the Missouri and crossed into Southwestern Iowa near the mouth of the Little Platte, crossed north Missouri to the mouth of Salt river, thence up the Mississippi and Des Moines to the region of Chariton and Grand rivers, and had headquarters in Mahaska county.

1803.—They join the Sacs and Foxes in an attack upon the Osages—a war which is ended by a treaty of cession by Sacs and Foxes in 1804.

The next mention made of Ioways is at a conference at Pembina under Little Crow a Sioux chief, in 1812. The



southern band is often engaged in war with Osages, which continued until the Osages were removed from Missouri. During this war Mahaska distinguished himself. At one time while stanching nose-bleed in the Missouri river, he asked some Frenchmen who were descending the river, to carry him across. The Frenchmen replied by killing one of Mahaska's braves. Another brave killed a Frenchman and Mahaska then killed another to bear his brother company. Whites at once raised complaint of Indians. Mahaska was captured and kept a prisoner in Missouri. During his imprisonment four sisters of his band lost their husbands. After his release Mahaska married the four widows after the custom of his tribe.

1815.—The peaceful intentions of the Ioways are declared in a treaty with the United States.¹

1819.—The friendly relations hitherto existing between the Ioways and Sacs and Foxes were suddenly broken. While hunting upon Iowa soil, a Sac treacherously killed a young Ioway. During the winter following, Black Hawk having discovered the murderer, started to deliver him to the Ioways. The murderer himself being sick, his brother volunteered to go in his place. In sight of the Ioway village, probably near Iowaville, Black Hawk and his braves halted while the volunteer prisoner went forward singing his death-song into the village. Black Hawk started back and at his first encampment was startled at night by the sounds of horses' feet. Arising suddenly to meet what he imagined to be the assault of Ioways he was surprised to see the prisoner he had escorted to the village. The Ioways struck with the magnanimity of the Sac, who had volunteered to take his brother's place, after many threats of execution had released him and had given him two horses, one for himself and one for his sick brother.

1823, May 1.—The hostility between Sacs and Foxes and

¹ See Indian Treaties, edited by Richard Peters. Little & Brown, 1846. The same work is authority for all statements taken from treaties with Indians.

Ioways culminated in a battle near Iowaville, the result of which was the transfer of sovereignty of that region from Ioways to Sacs and Foxes. The Ioways had returned from a hunt and were preparing to celebrate their return by a horse race. A plan previously laid to march against Black Hawk on Rock river had been discovered, and Black Hawk by a forced march reaches the village of the Ioways while they are in the height of their carousal. After the first onslaught the battle progresses by detachments of twenty-five to fifty on a side, until all the Ioway warriors are slain. The old men are then ruthlessly slaughtered. Sacs and Foxes gained supremacy and after the release of Black Hawk, following the Black Hawk war, he lived upon this battle ground, and died and was buried there.¹

1824.—Ioways ceded to the United States all their lands in northern Missouri. Mahaska then lived on the Des Moines river, about one hundred miles from its mouth. Going to Washington he unexpectedly met on his way his lovely wife Rantchewaime, who insisted upon going with him. After his return he settled down to a peaceful cultivation of the soil. His wife was a beautiful woman of a true christian character. Mahaska said of her, "Her hand was closed to those not in need, but was like a strainer full of holes to the needy." She had a remarkable influence over her tribe, but lost her life by being thrown from her horse.

Mahaska lost standing with the warlike of his tribe, having aided the United States in arresting some of them. He removed to the vicinity of the Nodaways in Cass county, and was slain, 1834, in the southeast part of the county, about sixty miles from his village.

1825.—Ioways joined Sacs and Foxes in the treaty which fixed the line of division between them and the Sioux.

1830.—Again in establishing "neutral territory." (See Map)

1833.—Catlin locates the Ioways in southwest Iowa and upon the Missouri river with a band of Mandans.

¹ Burlington Gazette, A. W. Harlan.

1836.—Ioways accepted lands across the Missouri river with the Missouri band of Sacs and Foxes.

1838.—Final cession was made of all lands in Iowa for the sum of \$157,500, kept by the United States as a fund upon which five per cent. was paid annually.

At this time they outnumbered Sacs and Foxes and were in a good degree civilized.

Ioways follow the custom of shaving the head as do other tribes with whom they have held alliance, Sacs and Foxes, Kansas, Osages and Pawnees.

They are very religious in tendency, believing in a future state with material happiness for all who are able "to walk the slippery log."

They are chaste in life to a degree beyond other tribes. No illegitimate child has been known among them. An Ioway boy selects an intimate friend, and between them is repeated the history of Damon and Pythias.

A Sioux had slain an Ioway youth. His intimate friend takes three Sioux scalps, riding one hundred miles in twenty-four hours to accomplish the revenge.

During the Civil War Ioways were loyal to the Union and many enlisted in the Union Army, though they suffered the loss of bonds kept as a fund for their benefit.

1891.—October saw the surrender of tribal organization and acceptance of lands in severalty.

SACS AND FOXES.

There is a fairly authenticated tradition that these tribes, near relatives, were at the mouth of the St. Lawrence one hundred years before the coming of the French. Moving westward on account of antipathy to French traders, the Foxes took a direct route to the northern shore of Lake Huron and by Sault Ste Marie and Mackinaw—came to the region of Green Bay; while the Sacs followed the St. Lawrence and the lower lakes, where they became embroiled with French Iroquois Indians—the Hurons. They then moved

northward and westward till they met their old friends the Foxes near Green Bay. Their old alliance is renewed and Father Hennepin gives the first historic record of them as living along the Fox river—the Foxes then were called Outagamies.

1689.—La Hontan reports them still upon the Fox river.

1712.—A portion of the Foxes join the English Iroquois for the purpose of dislodging the French at Detroit. Unsuccessful they return to the main tribe pursued by the French, who halt not until they have driven both Sacs and Foxes up the Fox river and across to the Wisconsin.


Pressed from the north by the Ottaways and Chippeways, then friendly to the French, and from the west by the Sioux, they move southward.

1734.—They form an alliance with English Iroquois probably Senecas, pass down Wisconsin river, now closed to French trade, cross the Mississippi river at some point between Prairie DuChien and Dubuque, and establish themselves upon both sides of the Mississippi. Not far from this time Chippeways, Ottaways and Pottawattamies join them in occupancy of southern Wisconsin and northern Illinois.

The tribes Sacs and Foxes appear to have separated, the Foxes or Musquakies as they now call themselves remain about the lead mines and the Sacs move eastward and joining the Miami Indians they make an attack upon St. Louis.

1788.—Foxes cede to Julien Dubuque the right to occupy and remain upon a strip of land extending twenty-one miles from the mouth of the Little Maquoketa northward and nine miles back from the Mississippi. This was confirmed afterward by Spanish authorities. Dubuque married Potosa, a Fox maiden and established a trading post at McGregor and another at Dubuque. The Foxes envious of their son-in-law established a rival village at what is now North Dubuque.

1789.—The Sacs are found at a council held at Fort Harmar in making a treaty of peace with the Shawanoes, in which Wyandots, Chippeways, Ottaways and Pottawattamies are joined.



1795-1798.—An apple orchard is planted near Montrose by a half breed of Sacs and Foxes.

After the treaty of 1769, it seemed to be the settled purpose of Sacs and their allies—Winnebagoes, Pottawattamies, Ottaways and Chippeways—to exterminate the Illinois.

In doing this they overrun northern Illinois and return to the Mississippi river in 1794, but are found at a council held at Fort Wayne. They soon rejoin their old friends the Foxes not again to be separated.

1804.—Sacs and Foxes unite in a treaty made at St. Louis ceding to the United States northeast Missouri, between Gasconade river and the Mississippi—also a strip bounded on the north by Wisconsin river for thirty-six miles, thence by a straight line to headwater of Fox river of Illinois, south and east by Fox and Illinois rivers, and west by Mississippi river, also a small piece of land for a fort north of the mouth of the Wisconsin river.

This treaty left the Sacs and Foxes with the right to hunt upon ceded lands till wanted for settlement.

By the terms of this treaty all warlike movements between Sacs and Foxes and Great and Little Osages were to cease; Spanish claims in northeast Missouri to remain valid.

From this time dates the friendly feeling subsisting between Sacs and Foxes and Ioways.

1805.—Lieutenant Pike, U. S. A., finds a band of Sacs at the head of Des Moines Rapids, upon the west bank, another band sixty miles above, on east bank, another band near Rock Island, and still another upon Upper Iowa river near its mouth.

He also finds villages of Foxes, one six miles above Rock Rapids in Iowa, one at a point twelve miles west of the mines at Dubuque and still another at the mouth of Turkey river.

1808.—Settlers were attracted by the rich lands held by the Indians upon the Mississippi and frequent collisions occurred. To protect settlers Fort Madison was erected. Claims were at once made by the more warlike of the Sacs and Foxes

that this act was a virtual violation of the treaty of 1804. Black Hawk's band attempts the capture of the fort. Unsuccessful in direct assault, a surprise is planned when the soldiers have been lured outside the enclosure: the plan is revealed by an Indian maid in love with one of the United States officers.

1812.—Sacs and Foxes were sent into Missouri that they may be out of reach of British influence during hostilities then pending between United States and Great Britain. But the Indians escaped into Canada.

1813.—In the battle of the Thames, Black Hawk commanded a force of Sacs in the British army.

About this time a stockade was built near the present site of Bellevue in Jackson county, as a defense against the inroads of Winnebagoes who had formed an alliance with Sacs and Foxes.


Settlements upon Indian lands in Illinois rapidly increased.

1815.—A very large council was held with the Indians near the mouth of the Missouri river, attended by part of the allied tribes of Sacs and Foxes, at which a treaty was made ratifying the treaty of 1804.

1816.—Fort Armstrong at Rock Island was built, and complaints were made by Sacs and Foxes of the disturbance of their Great Spirit by noise of building. Another treaty of peace and confirming again the treaty of cession of 1804 was signed.

From both these treaties Black Hawk withheld his signature and kept as far as lay in his power the Indians, chiefly Foxes, from assenting under the plea that the treaty of 1804 was not binding upon the tribes since it was negotiated by chiefs who were sent to St. Louis for an entirely different purpose (the release of some Indian prisoners), and that their unauthorized act could not bind the tribes. This feeling was cherished by Black Hawk until the war of 1832, and was without doubt encouraged by British forces in Canada whom Black Hawk frequently visited.

About this time the Indians of the Fox village west of



Dubuque were invited to a council to be held at Prairie DuChien. On their way thither they were waylaid by a band of Sioux and were ruthlessly slaughtered.

Years later this treacherous act was signally avenged but the Fox village was deserted.

1822.—One provision of the treaty of 1804 which required the maintenance of a trading post by the United States upon the ceded territory was abrogated.

1824.—Sacs and Foxes cede all lands between the Mississippi and Missouri rivers lying south of the Missouri line with a reservation for the occupancy of half breeds of the space south of the north Missouri line extended to the Mississippi and lying between the Mississippi and Des Moines rivers.

1820.—Four years before this cession an army officer who had married a Sac maiden was given his choice between the surrender of his surgeon's commission and the abandonment of his wife and children. He chose the former and settled upon the present site of Keokuk. His descendants became beneficiaries in the "Half Breed Tract." His Indian father-in-law did not forget his fidelity.

1825.—Frequent troubles arose between the various tribes hunting over the rich grounds of Wisconsin and Iowa then a part of Michigan territory. Sioux seemed to be the aggressors first upon Sacs and Foxes and Ioways south of them, then upon Chippeways, Ottaways, Winnebagoes, Pottawatamies and Menominies to the east of them. A large council was held at Prairie DuChien resulting in fixing boundary lines between Sioux and the neighboring tribes. The southern line alone concerns our inquiries. It began at the mouth of upper Iowa river, extending to its fork just in the edge of Winneshiek county, and up that fork to its source, then in direct line to the fork of the Red Cedar in Black Hawk county, thence in direct line to the upper fork of the Des Moines in Humboldt county, thence in direct line to the lower fork of the Big Sioux in Plymouth county and down the Sioux to the Missouri river in Woodbury county. (See Map.)

1828.—President Adams proclaimed lands open to settlement and ordered Sacs and Foxes across the Mississippi. See treaty of 1804.


1829.—Mining territory, 8,000,000 acres, was purchased of the Indians claiming lands in what was then known as the lead mines, with Galena near the center.

Keokuk, as chief of the Sacs and Foxes, with Talomah, a Fox chief, aided the United States in quieting the Winnebagoes. Talomah is credited with the organization of a secret society of Four Roads or Degrees, similar to organization among the whites. Black Hawk still remained unfriendly.

The Winnebago disturbances and unfriendly demonstrations across the eastern part of the line established in 1825 led to a treaty in which Sioux ceded to the United States strip of territory twenty miles wide north of their southern line from the Mississippi to the Des Moines river, and the Sacs and Foxes ceded a similar strip south of the same line these forty miles in width to be maintained as *neutral territory*. (See Map.)

By provisions of the same treaty Sacs, Foxes and Ioways gave to the United States permission to locate any Indian tribes they might choose upon territory bounded upon the west by the Missouri river to the mouth of the Kansas river thence by a line due north to the northwest corner of the State of Missouri (at this time the northwest corner of Missouri was upon the line of Taylor county), thence east along the northern line of Missouri to the ridge separating the branches of the Grand river, up that ridge to the divide between the valley of the Missouri and that of the Des Moines river until the headwaters of the Boyer river are reached, thence by direct line to the upper forks of the Des Moines river, thence by the line fixed by treaty of 1825 to the Missouri river.

After this treaty Keokuk persuaded Sacs to move across the Mississippi, and they are found along the Iowa and the Des Moines, chiefly east of the Ioways.



1831.—Black Hawk crosses the Mississippi with his band but evidently with no purpose of remaining except for hunting purposes, for in 1832 he returns for cultivation of their old fields. Their fences are destroyed while he visits his friends the Winnebagoes, and in retaliation for what he considers white depredations he goes upon the war path. Finding a trader upon the grounds of his village, he breaks in the head of his whiskey barrel. State troops and United States troops join in the pursuit of Indians and driving them into Wisconsin end the strife at the battle of the Bad Ax. Black Hawk is made prisoner by treachery of his Winnebago allies, Decorah and Chaska. The motives which led Black Hawk to these acts of hostility were: 1st.—British influence. 2d.—Winnebago solicitation, as the Winnebagoes had not forgotten the course pursued by Keokuk, with whom Black Hawk was ever on unfriendly terms because of jealousy. 3d.—For personal reasons—his adopted son had been treacherously murdered by whites and his strong family attachments proclaim him a human being.

He claimed that the treaty of 1804, if he must recognize it, had not been kept in good faith as their lands upon Rock river were not yet needed for settlement since nearly one hundred miles intervened between the white settlements and their village at Rock Island.

There is at least the shadow of an excuse for Black Hawk, and United States authorities must in their more quiet review of the events of that year recognize the fact.

1832.—Sacs and Foxes cede to the United States a strip of land following the west bank of the Mississippi river in a line about forty miles west therefrom, till it ends at the Missouri line fifty miles west of the Mississippi river *excepting* a piece of land of four hundred square miles on both sides of Iowa river and containing Keokuk's village not far from the site of Wapello, and excepting also the "Half Breed Tract."

1836.—Cession is made of the lands partially ceded in 1830, or what is now northwest Missouri.

Keokuk village reservation was sold to the United States for money consideration,—*75 cents per acre*.

1837.—1,250,000 acres of land west of cession of 1832 with the same terminal points north and south were purchased. This purchase brought into possession of the United States the entire county of Johnson.

1842.—Sacs and Foxes cede all their lands lying west of the Mississippi river reserving the right to remain for three years upon that portion of the territory of Iowa lying west of a line running between Wayne and Appanoose, Lucas and Monroe counties and through Marion, Jasper, Marshall and Hardin counties.


1845.—All had removed west of the Missouri river except a band of Musquakies still remaining in Tama county and who were authorized to hold lands there by act of legislature of 1856.

It may not be amiss to speak here of the leader in the Sac and Fox tribe the gallant *Keokuk*. He was a remarkable strategist. In battle with Sioux vastly superior to his own band as mounted, he suddenly dismounts his men, forms them into a hollow circle and thus resists successfully the repeated charges of the mounted Sioux.

At another time he finds himself alone in the midst of his deadly foes. Quick as thought he declares that he has come into their camp to announce that there are traitors among them who have told him their plot, but that they will find the Sacs ready for them. While the Sioux are temporarily dazed by such information Keokuk dashes out of the camp and escapes to his own men unharmed.

His statesmanship was shown in several instances, once when going to Washington in insisting upon Black Hawk's accompanying him as a favor to him, but for the secret reason that he dared not leave Black Hawk behind lest he foment trouble on account of his jealousy.

By skill in diplomacy and by his fearless oratory he won or awed opposing chiefs into acceptance of his views. He



was the very soul of magnanimity, as was shown in his treatment of his successor after he had been unjustly deposed from his chieftaincy.

But great as he was he was weak in his own moral purposes and fell a victim to the Indian's persistent enemy, strong drink.

Among the Indians there is found a chivalric spirit as instanced in the incident of the Ioway's treatment of the murderer's proxy delivered to them by Black Hawk. Single combats were very common. Neither combatant would take advantage of circumstances. One rider unhorsed, the other rider dismounts. One bow broken or arrows spent, the other bow and quiver are cast aside; the last resort to the knife ends the strife by the death of one, and the other surrenders himself or is surrendered by a near relative, a sister even, to such punishment as the tribe of the vanquished brave may see fit to inflict.

Black Hawk, a fine specimen of manly strength, a war brave, was a man of great dignity of character, of proud demeanor.

He at one time turned away in scorn from white hospitality when he learned that he was not a guest at the first table. "Your meat my dogs would not eat." Whiskey proved his deadly foe, although he was an original prohibitionist of white traders.¹ In a feud between Sacs and Ioways two of the latter were killed and seven Mackinac blankets were considered as a fair equivalent for their lives, but a keg of whiskey was tapped by the Ioways in token of the consummated trade.

In response to a toast July 4, 1838, Black Hawk says "I liked my towns, my corn-fields and the home of my people: I fought for it."

When asked by Lieut. Pike to give up the British flag and to accept the United States flag alone, Black Hawk says,

¹ See page 47.

“We decline, we wish to have two fathers.” When on a visit to Fortress Monroe, Black Hawk in a speech says, “The red man has but few houses and few warriors, but the red man has a heart which throbs as warmly as the heart of his white brother,”—a fact not sufficiently recognized.

A Sioux once said in the presence of Keokuk, “We must bore a Sauk’s ears with sticks;” Keokuk replied, “We could not bore your thick skulls with sticks, it would take hot iron.”

Wapello, once a Fox chief was succeeded by Poweshiek who for a time resided in Pleasant Valley, of Johnson county, where a trading post was established.

1838—Sacs and Foxes had removed to Agency City where is found a record of one hundred fifty-seven chiefs and braves.

Last trading post was near Des Moines on Keokuk Prairie.

WINNEBAGOES.

They belong to the Sioux nation though they claim an independent origin upon the west bank of Lake Michigan and north of Green Bay. Carver in a work published, 1796, of his travels among the Indians, 1766-1769, claims that the Winnebagoes were originally of Mexico, and bases his reason upon their hatred of Spaniards: he admits the affiliation with Sioux. They also claim the Ioways, Otoes, Missouris and Omahas as their descendants. These claims agree only on the common origin in the Sioux family, and in the recognition by the latter of Winnebagoes as their “elder brothers.”

1669—French Missionaries met them about Green Bay.

1766—Carver found them upon Rock river. They and the Ioways are probably the only Sioux that moved across the Mississippi river. Meeting the Algonquin tribes of Sacs and Foxes, Ottawas, Chippeways, Pottawattamies and Mascoutins they had formed alliances which continued for more than one hundred and fifty years.

1763—The peace between France and England found them reluctant to accept English rule, but at last they did so and

acted with England through the Revolutionary War, as also through the war of 1812. They joined in the Chicago Massacre with Pottawattamies in 1812. They were found with Tecumseh in Indiana and Ohio and Michigan.

1816—Made treaty of peace and friendship with United States.

1825—Were included in the treaty fixing boundaries. Again in 1827 and in 1828.

1829—Ceded part of their lands in Wisconsin and Northern Illinois, but joined Black Hawk's band in 1832. At the end of the war of 1832, they ceded all their lands in Wisconsin, accepting therefor lands of the neutral territory¹ from the Mississippi river to the Cedar river. This territory is ceded to United States in 1837.

1846—They accept land on St. Peter's river.

One-eyed Decorah and Chasta captured Black Hawk. Dandy was their orator. They have been wasted away by drunkenness.

POTTAWATTAMIES.

These are of Algonquin stock. The first record of them indicates that they were found about the head of Lake Michigan and extending as far east as Lake Erie.

At the council of 1789 they were found as part of what remained of Pontiac's Confederacy. They were the first to check the westward movement of the Iroquois.

They belonged to Tecumseh's Confederacy in the war of 1812, occupied Fort Dearborn after the troops deserted it, attempted to prevent the attack upon the fort made by the Winnebagoes, but did nothing to hinder the subsequent massacre.

With no other tribe have so many treaties been negotiated.

1829—Land ceded in Southern Wisconsin, Northern Illinois, including Chicago, with several reservations. This last treaty repeats that of 1816 with reference to Chicago.

¹ See Map.

1832—Treaty of cession of lands south of Chicago. Three treaties of this date cover lands in Michigan and Indiana. LeClaire, of Pottawattamie descent by mother, remained with the tribe, acting as interpreter at Fort Armstrong, 1818, married a Sac, 1820, was in Arkansas till 1827, then at Fort Armstrong. In Black Hawk purchase, reservations were made for Mr. and Mrs. LeClaire at Davenport and above. Mr. LeClaire continued to act as interpreter till 1842.

1833—Treaty made with united Chippeways, Ottawas and Pottawattamies granted them five million acres in Southwestern Iowa upon lands ceded for such purposes by Sioux, Sacs and Foxes, Ioways, Otoes and Missouris in 1829.¹

1834—Three treaties, small cessions of reservations.

1835—They are upon the five million acres as per treaty of 1833. Their burial ground still remains near Lewis, Cass county, on Nishnabotna river.

1836—Nine treaties ceded reservations previously held in Illinois and Indiana.

1837—Treaty confirming treaties of 1836 and accepting lands southwest of Missouri river.

1841—Billy Caldwell, a white chief, dies.

1846—All are removed west of Missouri river.

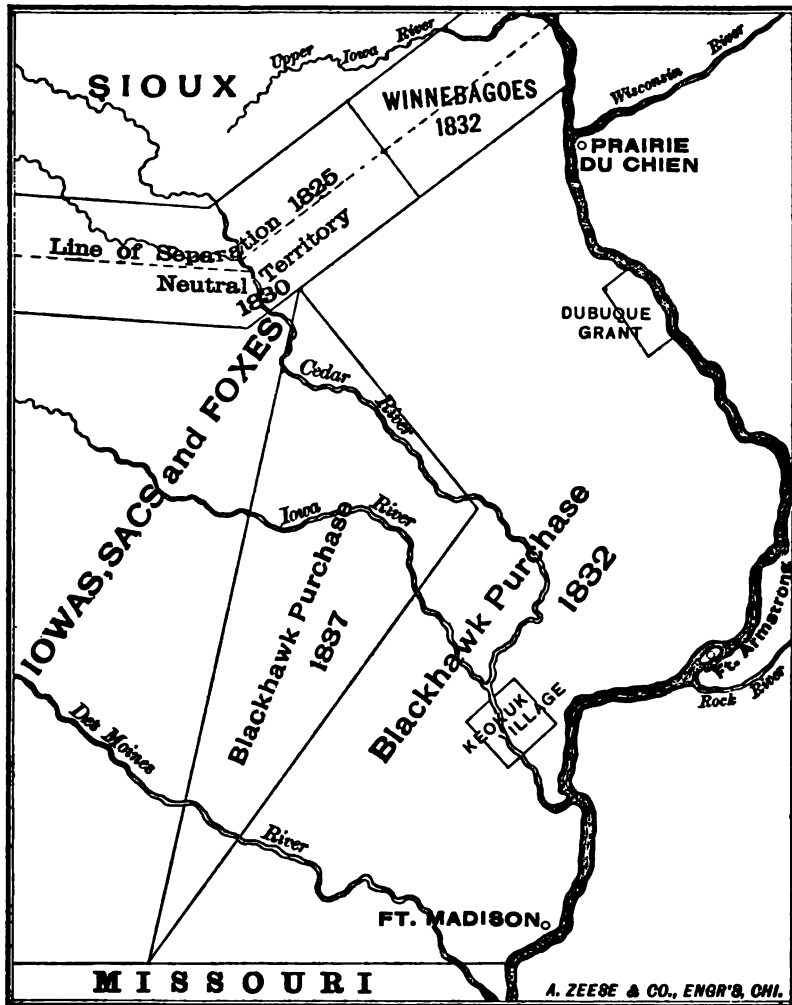
With no other tribe have so many treaties been made, forty-four in number, from 1789-1846.

OTTAWAS AND CHIPPEWAYS.

A portion of these were Indians found united with Pottawattamies and with them residing in Southwest Iowa from 1835 to their final removal from the State in 1845.

Before the admission of the State, 1846, all Indian tribes left the Territory except a few who roamed over the Northwestern part of the State, and a small band in Tama county.

¹ See page 46.



"THE LOUISIANA PURCHASE."

BY C. M. HOBBY.

Delivered March 15th, 1892.

[The facts and incidents of the following Lecture have been drawn principally from the published documents of the State Department, and it was the intention of the author to give quotations from these documents in foot notes, but as this would cause unnecessary repetition, he desires to refer the careful student to Vols. II., III. and IV., *American State Papers*, also *Annals of Congress*, Eighth Congress, First and Second Session, and *History of Louisiana*, by Barbé Marbois.]



IT HAS always seemed unfortunate, that with so much of romance in our own history, so many changes of boundary, so many diplomatic questions, involving relationship with so many nations, races, and conditions of people, that the school boy of to-day should know so much of the petty actions of foreign powers and so little of our own history. The change of nominal proprietorship of a few thousand acres marks an epoch in the history of France, Germany, or the Italian States, but our own country has added to its possessions more than one thousand millions of acres within ninety years, three times as much land, and better land too, for every year of the ninety, than the German conquests of 1870. In our dealings with foreign countries, our diplomats have held their own although our foreign service since the early years of the republic, has not been a trained and experienced one.

The principles and methods of our earlier foreign ministers still influence our State department, and the tyro can find in


the voluminous correspondence of Franklin, Jay, Jefferson, Madison, Monroe, and the three Adamses hints for almost any occasion. The story of the Louisiana Purchase belongs to the early days of the Republic and comes appropriately in a course of lectures upon Iowa history; for, Iowa itself is a part of that Louisiana which so interested the French court two hundred years ago. Since the white man first unfurled a flag, the emblem of sovereignty, over these beautiful prairies, three times the flag has changed, and there have been four acquisitions of Louisiana.

Three hundred and eighty years ago (1512), Juan Ponce de Leon landed in Florida searching for youth and gold, especially the latter, and nearly thirty years later, or three hundred and fifty-one years ago (1541), De Soto crossed the Mississippi with six hundred men, into what is now the State of Arkansas. Other than the unmarked graves of half of his command, the expedition of De Soto left no trace.

More than one hundred years the red man had remained undisturbed in these magnificent hunting grounds, when Father Marquette on the 17th of June, 1573, entered upon the Mississippi from the Wisconsin. Not for gold came he, nor for the prolongation of life in this world; but in quest of souls for the next, the humble Jesuit opened the gates of exploration, not again to be closed; with him came Joliet, the trader, and thus the cross and the yard stick found the way where sword and buckler failed.

Then came La Salle and Hennepin. La Salle dreamed of empire, of glory to France, and himself; a chain of forts on the Mississippi; Canada and the Gulf connected; the lakes and the river to be the arteries of a commerce that should give wealth and glory to the king, and homes and fortunes to untold generations. La Salle and Tonti descended the Mississippi to its mouth and took possession in the name of the king of France on the 9th of April, ¹⁶⁸²1682, and thus the province of Louisiana was born two hundred and ten years ago.

The first colony which La Salle attempted to transplant to




the mouth of the Mississippi, failed to find the way, and landed in Texas at Matagorda bay. But we must pass the stories of La Salle and his misfortunes, of D'Iberville and Bienville, and their successful colonization, the growing plantations, the commerce, the founding of St. Louis, the romance and reality of the adventurous colonists until one hundred and thirty years ago, the Spaniard came into possession of Louisiana, and thus divided with Great Britain the American continent. Louis the Great--Louis XIV.--was king of France when La Salle proclaimed Louisiana French property. Louis XV. succeeded him and in his day, Law and his financial schemes appeared on the stage, and Louisiana and the Mississippi, became the source of credit that was to float the business of France and make everybody prosperous, and so in connection with Louisiana began the first experiments in a fiscal policy which brought disaster to the French nation and left a heritage of financial theories, again and again to sprout, even to our day in the old Louisiana soil.

Thus it may be seen that the early history of this valley is surrounded by all the chivalric impulse, the high aspirations, the heroism, and misfortune, that interest us in the record of the Atlantic States; and that the same difficulties of colonial government, led the same kind of ambitious spirits into similar adventures.

We note, however, a great difference between the French and English colonial enterprise, in the management of Indian affairs; French tact and intrigue succeeding better with the wily red man, than English positiveness. The same qualities, however, led to more internal dissensions among the French colonies than among the English.

Concerning the events preceding the acquisition of Louisiana, and the purchase itself, especially the details of the great transaction, many mouldy witnesses lie hidden and forgotten in the archives of the foreign ministries of the United States,




France, and England; much of the correspondence of the time has been lost in the vicissitudes of war, domestic and foreign; yet from what there is accessible a reconnaissance of the field may be made, and an idea of the position of affairs secured.

While we may admit that the wisdom and influence of no individual is necessary to social evolution, yet we must also acknowledge that apparently unimportant actions, good or bad, of the few persons entrusted with authority may change the destinies of nations, and influence the progress of civilization.

It is to such a record that I invite your attention, and in presenting the facts of the "Louisiana Purchase," I must claim the privilege of clustering the events around individual actors.

The Eighteenth Century left but few great men to the Nineteenth, at least, so far as men of capacity in public affairs, with the opportunity to use it, can be called great men. Frederick the Great had been at rest in the Garrison church for fifteen years, our own Washington was sleeping at Mount Vernon; of the few who survived, Napoleon Bonaparte has certainly by his military ability, his audacity, his success and his downfall, filled the largest measure in human estimation. Commander-in-chief of the French army in Italy at twenty-seven, master of Egypt, at twenty-eight, conqueror of Europe, first consul by title, and virtual Emperor of France and Italy, Napoleon enters the nineteenth century less than thirty-two years of age.

So far as Napoleon took advice, or listened to counsel, it came from his minister Talleyrand, a man as able and unscrupulous in statecraft as Napoleon was in the profession of arms; with little liking for America, whose first president had declined to receive him, and whose early envoys to the French Republic had exposed his corrupt practices; he undoubtedly believed, and had so expressed himself in a pamphlet, that in spite of the war of Independence, the United States, from the force of language, race and interest, would become the natural ally of England.




In America, the presidency of Jefferson commenced with the century. Jefferson was by far the ablest American statesman of this century who participated in the affairs of the last, and he was particularly fortunate in his Secretary of State, Madison. The greatness of Jefferson grows with time, and as this century fades away, it seems probable that the future historian will consider him the foremost American statesman of any time. Others have ably met the problems that confronted them, but Jefferson alone, of all who have left their records upon American history, looked into the future, and anticipated its problems.

The author of the first statute guaranteeing religious freedom, of the Declaration of Independence and of our system of decimal currency, knowing America, and her necessities, better than any one else, familiar by long residence in France with French sentiment, and with the development of the new phases of French character that followed the revolution, he recognized the importance of Louisiana when the opportunity came, and wisely made use of it.

It is natural for the mind of man to believe that present conditions and surroundings are inevitable, and it is often said that our western civilization is the natural expansion of the civilization of the east, that Iowa is an offshoot of New England, modified by Teuton, Celt, and Slav; so far as the part above the surface is concerned, this may well be admitted, but why New England crossed the Mississippi, instead of the St. Lawrence, why the development followed lines of transplanted Anglo-Saxon growth, instead of those of the French discoverers and first white occupiers; why here in Iowa our language is English, and our flag the stars and stripes, is worthy of a little thought, and bears with it some useful lessons, for those who believe in and would foster the manifest destiny of this great republic.

The theme of to-night is the peaceful conquest of an empire, greater than that of Cæsar or of Charlemagne, the acquisition of the most fertile part of this most fruitful land.




France mourns for Alsace, and well she may, for Alsace is a beautiful garden, but when she parted with Louisiana, she lost a province capable of making three hundred States each as large and fertile as Alsatia. When the eighteenth century was drawing to a close, France presented a condition of affairs hitherto unknown in history. Her people, descended from the free tribes of ancient Gaul, had fallen into an apparently hopeless bondage, into slavery more abject than the African slavery of the south, and then suddenly had burst their bonds and overwhelmed their former task-masters; and when the rage was on them rejected all authority; but eventually as they poured out against the authority of other lands, they appreciated the necessity of military subordination and thus opened the way for a master, a demand that nature has ever been ready to supply in such emergencies.

Across the channel, the British Islands were well started on their way to territorial and financial aggrandizement, already the shop-keeping spirit, which has made England the richest and most detested nation of the globe, controlled the cabinet and the policy of England, at least so far as foreign affairs were concerned. England still smarted under the loss of her colonies, and still nourished the hopes of regaining their fealty; she attributed the loss to France, and added it to the long account which had accumulated from the strife and mutual hatred of a thousand years. Then, as now, England dreaded maritime rivalry, her intense selfishness, then as now, would monopolize the isles of the ocean, the ocean itself, and grasp a percentage for Threadneedle street, from the circumambient air.

The map of America at the close of the century shows that foreign control existed over more than three-fourths of the continent south of latitude 50° . The United States, with the present northern boundary of the great lakes, claimed to the Mississippi on the west, and to Florida on the south, at about latitude 31° .

We had no territory on the Gulf of Mexico, all to the west



and south was held by Spain, and was known as The Floridas and Louisiana. Louisiana itself, as ceded from France to Spain, included all between the Mississippi and the Spanish province of Mexico indefinitely north, together with west Florida, or at least, for the descriptions are very indefinite, the gulf coast as far as, and including, Mobile. This cession to Spain, November 3d, 1762, was followed on the 10th of February, 1763, by a general treaty of peace between the kings of Spain, France and Great Britain, in which treaty of peace France ceded to Great Britain all territory east of the Mississippi except the town of New Orleans and the island on which it stands, and at the same time Spain ceded the Floridas to England.

September 3d, 1783, when the independence of the United States was recognized by Great Britain, the Floridas were retroceded to Spain. Thus the United States had Spain for a neighbor both west and south.


The United States when the new century opened had been at peace for seventeen years, for twelve years the Constitution had been the charter and compact of nationality. The second census had shown a great increase of population; it was known that there were 5,300,000 inhabitants, our commerce was increasing with great rapidity and we were rapidly approaching Great Britain in the amount of our tonnage.

But our people had lost the solid front which carried them so gloriously through the war of Independence, party dissensions ran high and bitter, Democracy weighed heavily on the spirits of those who still looked back to England as home, and those who loved all English institutions excepting, perhaps, the personality of the Hanoverian monarchy; many were shocked at the atrocities of the French revolution, forgetting the greater atrocities that led to it; their sympathy was with the royalists of France against the Republicans, but with England against all of France. Others remembered with gratitude the assistance that France had given us in our dark hours, many indeed were still active in public affairs who

had fought side by side with French soldiers in the campaign so happily ended by French aid at Yorktown; these naturally sympathized with the French people, and only remembered England for her crimes against liberty and their country. Fortunately the federalist administration of Adams, and the republican administration of Jefferson, were both conservative administrations, and under both, although the danger of war with France was imminent and constant, the representatives of the people upheld the hands of the presidency in all dealing with foreign countries, and were always ready to sink party dissensions, when it became necessary to defend the country against foreign intrigues, or when the lives and property of Americans were endangered abroad. It is gratifying to follow the record of these times and compare the patriotism they exhibited with the pusillanimous conduct of a portion of the people, during the second war with England.

Those in authority in France, however, were led to believe that by proper manifestations, America might be drawn into war against England. Such was not the belief of Talleyrand, and had it been true that the people were inclined to help France, the treatment our ambassadors received from the Directory, and the persistent seizure of our vessels and imprisonment of our sailors, rapidly discharged the debt of the old alliance, and cooled the most ardent friendship.

It is necessary to briefly consider those troubles known as French spolations, the echoes and reminiscences of which have lingered around the lobby of Congress even to our own times. These arose, first, from the action of the French government in defining the rights of neutrals, whereby in effect under the decrees of the Directory, vessels were declared lawful prize which carried English goods, or visited English ports, and American vessels were seized and condemned even when in sight of our own ports. Later, under the first consul, an American serving on an English ship, even if under compulsion, was declared a pirate, and through the whole course the French policy was to consider everything that was not for



France, as for England, thus practically destroying all consideration of neutrality. These spoilations commenced before 1796, and continued until 1801, and during that time there were seized by French and allied vessels, mainly privateers, more than three hundred vessels flying the American flag. Some were properly condemned, but in the eventual settlement, \$2,750,000 was allowed for seizures contrary to law and treaty. In addition our sailors and citizens were imprisoned, our minister treated with discourtesy, and a state of actual warfare upon the seas resulted. Constant efforts to secure justice were made. Mr. Monroe, who formulated the doctrine that goes by his name many years later, was recalled by President Washington in 1796. His successor was C. C. Pinckney, but the Directory refused to receive him, "or any minister until the United States had redressed grievances complained of," probably referring to the summary way in which the meddling minister Genet was sent home, and also to the neutral policy of the United States in the war between England and France. Pinckney whose success in Spain as a diplomatist in the previous year, had given prestige to his name, remained as a special agent in Paris until he was sent out of the country the next year in February. Early in his term President Adams nominated, July 15th, 1797, C. C. Pinckney, John Marshall and Elbridge Gerry, envoys extraordinary to France with instructions to secure some kind of an adjustment of the doctrine of neutrality, and some assurance that American rights and property should be respected upon the high seas.

They were never officially received, but their letters have thrown much light upon the condition of affairs in Paris.

The treaty with Spain in 1795, had given to our people the free navigation of the Mississippi, together with the "right of deposit," at New Orleans for three years, and afterwards either at New Orleans or some other point on the same island. This right of deposit, as it was called, was the privilege of disembarking and storing produce and merchandise for export


until it could be conveniently shipped, without other tax, tariff, or charge except for storage.

This control of the great river by a foreign country was necessarily very unpleasant for the inhabitants of the rapidly growing settlements of western Pennsylvania, Ohio and Kentucky. Kentucky had been admitted into the Union in 1792, and it is apparent that this admission was hastened to frustrate the plans which had been formed looking towards the establishment of an independent republic or empire in the Mississippi valley, with the Alleghanies as the eastern boundary.

To fully understand the mental condition of the people who had come over the mountains to the rich lands of the west, we must think of the problems that faced them. Into their minds came no hint of the wonders that were to be worked by steam. Even western Pennsylvania could not dream of marketing produce on the Atlantic coast.

Nature had made a highway the most complete of the known world, penetrating every part of a land, greater than all France, Germany, Spain and Italy, a land stretching in climate from semi-tropical through every zone of temperate, growing the sugar cane on the south, rich in lumber in the north, capable of producing everything for the benefit of man, excepting only the banana and the date. No nation then existing had such diversity, no nation seemed to be so completely bound together by nature, and so isolated by nature from dependence upon others.

They could see no possible community of interest with the people who, fringing the Atlantic coast, constituted the United States; they had less need, less traffic, less of the sentimental and emotional influences that enter into even the structure of nations, to assimilate them to the United States, than the States had to bind them to England. What wonder then that they looked forward to a great and independent destiny, and that the one unpleasant prospect was, the possession by Spain of the mouth of the Mississippi. That Genet, while minister of France to this country, fostered these sentiments, and sug-



gested the separation and seizing of the mouth of the Mississippi is well known, how extensive the conspiracy, and who were engaged in it would form an interesting topic for the historian. Aaron Burr was Vice-President of the United States, at the opening of the century, and few years later he was connected with a conspiracy having somewhat similar objects.

But the consideration of all the circumstances and actors in the drama of the Louisiana Purchase, would require a volume and we must hasten to the deed itself. Near the close of the last century, namely, October 1st, 1800, Spain retroceded to France the province of Louisiana in these characteristic, and not easily understood terms: "The colony or province of Louisiana with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States."

The interpretation which it seems would cover the intention, for we must recall the fact, that the ambassadors negotiating the treaty knew less about Louisiana than they knew of Central Asia, the most plausible interpretation would be all of Louisiana that France ceded to Spain, which would only take on the east of the river the island of New Orleans: but our people have always held that it meant all of Louisiana as it was originally, including that portion Spain got from Great Britain, viz.: West Florida, including Mobile to the river Perdido. This treaty of Ildefonso opens the story. It was not intended that the treaty should be made public, but the inquiring minds of the English foreign office, with its corruption fund, easily had the ears of its representatives at the key holes, in Madrid, in Paris, in San Ildefonso, and the American minister to England, Rufus King, was allowed by Lord Hawksbury to share the knowledge very early, before it was even rumored in Paris or Madrid, and long before the people or the Governor of Louisiana itself dreamed of it as possible.

On the 29th of March, 1791, King wrote home of the

rumor. In those days it took time to cross the Atlantic, usually from seventy to ninety days. Pinckney, in Paris, counted six months as the necessary time to get a reply from Washington, but we find King's letter of March 29th, had been received, considered and acted upon by June 9th, when Madison, Secretary of State, wrote to Pinckney, minister to Spain, once more. Livingston, whom Jefferson had sent to France, seems not to have been informed in regard to this cession of Louisiana to France until he received instructions in September (1801), indeed he was late in arriving at his post. From this point, I shall attempt to paraphrase the letters, communications and instructions, so as to show the action of the mind and the growth of the great project of the American acquisition of Louisiana, divested of the superfluous verbiage of diplomatic correspondence.

Mr. Jefferson had in mind the condition of affairs in the Mississippi valley, the uneasiness of the people, the many incentives luring the people to separate national existence, and the rumor of the retrocession to France suggested to him grave possibilities. France, the most active and most powerful nation of the time, had in New Orleans and at St. Louis, French people familiar with the country. Canada had been a French province within his own lifetime, and the French inhabitants of Canada, then as now, failed to assimilate with the English speaking people. He viewed with alarm the possibility of a great French empire on the west of the Alleghanies, and he directed Mr. Madison to call Livingston's attention to these matters, and say to him that France would be a much more uncomfortable neighbor than Spain. And he asks, "cannot you ministers to France and Spain stop this rumored trade?" Livingston suggested to Talleyrand that in making the deal the two governments should cede the Floridas to the United States. Talleyrand talked of other subjects and Livingston was led to think there was nothing in the trade, and that Spain would back out. Later, in 1802, he began to believe it possible, but the cooking of Paris and the kindly manipula-

tions of the astute Talleyrand convinced him that France would be a good neighbor, and that she would allow us free navigation of the Mississippi. Along in March Livingston caught Talleyrand at some of his tricks, and wrote home that he could not find out about anything. In May, by order of the President, Madison wrote him again, "It won't do to have the Mississippi closed to us." "The President wants you to find out what sum France will take for New Orleans and the Floridas" laboring under the idea that Spain had ceded the Floridas to France. We must have the mouth of the river, and he wants you, Mr. Livingston, "to devote every attention to this object, and be frequent and particular in your communications relating to it." The President also wrote personally at this time, and by Mr. Livingston's acknowledgment of the receipt of the letter, we see that just ninety years ago, it took the same time for a letter to get from Washington to Paris, as it now takes an American to make his summer trip to Europe and to return home.

During this important summer, Mr. Livingston, who personally and by his friends, always afterwards claimed the entire credit for the Louisiana Purchase, spent his time in trying vainly to ascertain the truth of what King had written home long before, and in writing elaborate memoirs to convince the French that Louisiana was useless for them, or for any one else. In spite of the constant urging from Jefferson and Madison he seems to have accomplished nothing. He gives, however, in one of his letters a brief description of Napoleon, that is worth remembering.

"There never was a government in which less could be done by negotiation than here. There is no people, no legislature, no counsellors (*sic*), one man is everything. He seldom asks advice, and never hears it unasked. His ministers are mere clerks, and his legislature and counsellors parade officers. Were it not for the uneasiness it excites at home it (the Louisiana trade) would give no worry, for I am persuaded that the whole will end in a relinquishment of the

country, and transfer of the capital (New Orleans) to the United States." In November he asks for instructions as to making an offer, "can't get anything for nothing." Jefferson's mind is still on Louisiana when Congress assembles in December, and early in January he nominates James Monroe, as minister extraordinary, to act with Livingston in Paris, and Pinckney in Spain. "We must have the mouth of the Mississippi;" the general instructions given to Monroe and Livingston were to obtain if possible the whole foreign territory east of the Mississippi, the Floridas and New Orleans with the island, with agreement for free and unobstructed navigation of the Mississippi, by contracting parties.

Meanwhile Livingston waiting for Monroe gets a new idea and actually suggests to Talleyrand that the island of New Orleans be made an independent State, under the protection of Spain, France and the United States. Talleyrand continues his peculiar tactics until along in April. Livingston begins to talk business with Barbé Marbois, Napoleon's minister of the treasury. Marbois has been in America, and in the French colonies, understands the condition of affairs, the dangers and expedencies, moreover he has the ear of Napoleon; about this time Talleyrand asks Livingston what the United States would give for the whole of Louisiana. Livingston thinks he had better wait for Monroe's arrival, but does not want anything only the east side of the river. After this point the interesting part of the drama shifts to the French side, and we can best listen to the story told by Marbois who evidently was actuated by fear of England, as well as sympathy with the United States. But before looking at the motive from the French side, it is well to bear in mind that while these negotiations were progressing, there were crossing the Atlantic positive instructions to Monroe and Livingston to complete the business at once, either to buy New Orleans and the Floridas, or to notify France that we should take possession of them, and to withdraw at once from France and enter into negotiations with England for alliance in the then threat-

ened war against France; so important did the peaceful Jefferson regard the possession of the Mississippi.

But while the American ministers were seeking only New Orleans and the Floridas, as security for the free navigation of the Mississippi, Napoleon brought face to face with approaching war with England, saw the necessity of preparation for the contest, and voluntarily and we may imagine abruptly opened the subject to Marbois, who having been secretary of legation to the United States at the close of the Revolutionary war, was evidently believed by Napoleon to be more favorable to American interests than Talleyrand. It was on the tenth of April, and he had been declaiming forcibly about England and the probability of English ships making a descent upon Louisiana. "I know not whether they are not already there" he says: "It is their usual course, and if I had been in their place I should not have waited." "I wish if there is still time, to take away from them any idea that they may have of ever possessing that colony. I think of ceding it to the United States. I can scarcely say that I cede it to them, for it is not yet in our possession." "If however, I leave the least time to our enemies I should only transmit an empty title to those Republicans whose friendship I seek. They only ask one town in Louisiana; but I already consider the colony as entirely lost, and it appears to me, that in the hands of this growing power, it will be more useful to the policy, and even to the commerce of France, than if I should attempt to keep it." Thus it seems that before Monroe arrived in Paris, Napoleon had determined to part with Louisiana, so that upon the arrival of Monroe there remained only the question of price to be determined. Thus with all the anxiety on the part of the Americans to control the navigation of the Mississippi, despite the suggestions of war, and the instructions then on the water, to secure the mouth of the Mississippi by purchase from France if possible, and that failing, to prepare for alliance with England, the key to the suc-


cessful result is given by the prophetic language of the first consul soon to be emperor of the French.

“This accession of territory, strengthens forever the power of the United States, and I have just given to England a maritime rival, that will sooner or later humble her pride.”

The sum to be paid to France was sixty million francs, and the United States agreed to pay the claims known as the spoliation claims, estimated at twenty million more, being at the rate of two and one-half cents an acre.


The accepted boundaries of this imperial domain, were on the east from the Lake of the Woods to the most northerly source of the Mississippi, thence along the Mississippi to the thirty-first parallel, thence east to the Perdido river and south to the Gulf of Mexico, on the west commencing in the Rocky mountains at an indefinite point, recognized by England as the forty-ninth parallel, thence along the Rocky mountains to the head waters of the north fork of the Arkansas river, along the Arkansas river to the one hundredth meridian of longitude, thence south to the Red river, at a point north of the mouth of the Sabine river, thence south to and along the Sabine river to the gulf. In addition the so-called Oregon country, comprising the present States of Washington, Oregon and Idaho, was claimed as being conveyed by France to us, and when the north limit of the forty-ninth parallel was established, this was conceded. This peaceful acquisition doubled our territory, and made it necessary for the new nation to be considered in the councils of the old world. From it there have entered the Union fifteen States, and the fifteen stars in the flag represent nearly twenty per cent of the entire population.

The brief advantage given by the necessity and impetuosity of the great Napoleon, undoubtedly has resulted in the perpetuation of the union of the States, for had this magnificent prize been held by France, subject to the disposition of the allies in 1815, we cannot doubt but that the red ensign of England would still wave over it, for the two mighty water-ways



would have led to its population by a people with little interest in the Atlantic States; or had England for once been generous, and restored it to Spain, it would have separated from that country only to found an empire by itself.

The iron rail has bound together the interests of the east and west. The vision of La Salle is fulfilled by people of another race. The Father of Waters flows through a magnificent valley, peopled by prosperous millions and its population is entirely loyal to the Constitution of the fathers. No dream of separate empire disturbs the slumber of the ambitious; fear of sectional injustice can no longer sway the multitude, for the wealth and commerce of the valley is increasing faster even than its population, and we may well believe that as our people now control the policy of the Union, so the political destiny of the continent will rest in the hands of our children.



THE INTRODUCTION OF THE COMMON LAW INTO IOWA.

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IT WILL be important in the course of this discussion to have a clear understanding of the meaning of the terms "Civil Law" and "Common Law." The term "civil law" is sometimes used to indicate the portion of any system of law which determines private rights and provides remedies for the adjustment of private controversies, as distinct from criminal law, which defines public wrongs and provides for their punishment as offenses against the state, or as distinct from military law by which the military forces are governed and which is administered by courts martial. But this is not its meaning as used in jurisprudence. As the name of a system of law, the "Civil Law" designates that system which was developed among the Romans and carried by them into all the countries of Europe becoming subject to them, or to their civilization, while the term "Common Law" indicates the system of law which originated in England and has been carried by English speaking people to every part of the world.

In Italy, France, Spain, Germany, Denmark, Sweden and Norway, even in Russia, the Civil Law has furnished the basis of the national system of law. In each country will be found local customs and statutory provisions peculiar to that

country, but in each the student of law will study the general principles of the Civil Law in order to secure a knowledge of the fundamentals of the law, and the lawyer in arguing cases, and the judge in deciding them will be guided by those general principles, so far as they are not directly modified or superseded by particular statutes or customs.

On the other hand, the student of law in England, or in any one of the United States (with one exception), or in Canada, or India, or Australia, will be directed to a wholly distinct system, and the lawyer and judge will refer constantly to principles having a wholly different origin and development.


There is here one of the great and striking contrasts of history. The Romans put their impress upon the law, the language, the literature, the religion, the political institutions, of every people in Europe with whom they came in contact, and barbarians who did not directly come in contact with the Roman legions, and recognize allegiance to the Roman power, nevertheless, as they advanced towards learning and enlightenment, found the only available channels for such advancement leading toward the Roman civilization. The savage hordes which pushed into the south of Europe to possess themselves of its sunny lands, its fertility and its accumulated wealth, yielded not only to the influence of a milder climate but also to the amelioration of a civilization that tended to luxury in both its physical and its intellectual phases.

The study of the Civil Law was a part of the course of initiation into this civilization and wherever there was an effort to attain to the arts and polite learning of the Romans, there the Civil Law was studied. Thus it finally penetrated the less hospitable regions of northern Europe.

From this steady, though tardy spread of civilization in the north of Europe, some small tribes, remote and almost unknown to the Roman world, but to which we trace our English speaking race, were curiously exempted. Before any rays of enlightenment had penetrated their deep forests or

shone across their morasses some portions of the Saxons and kindred tribes had left their inhospitable climate, traversed in the rude barks of those barbaric times the wild North Sea, and had attained a foothold in one little corner of the Island of Great Britain, where the germs of civilization had already sprouted under the influence of Roman power and learning, but had sprouted at the end of the season, as it were, when the warmth of the Roman summer was failing; sprouted to be nipped and to perish in the chillness which was beginning to creep toward the center of that magnificent ancient world. In regions where the season had been longer its germs survived, to be warmed into life again when the time came for the revival of learning. In these far off British Isles some germ might also have retained its vitality during the long, long, dark winter, had only the soil remained undisturbed. But these ruthless Anglo-Saxons, who had never yet learned to feel the slightest sympathy with the enlightenment with which they now came in contact, tore up its roots and exterminated every trace of it except a few walls, and roads, and names of places, and made a razed tablet for a new race history. Their brother Teutons, in the wilderness of northwestern Europe, were reached at last and conquered by Roman influence, though not by Roman arms, but these had cut themselves off from such influence and developed a civilization of their own.

The statement that the Anglo-Saxons cut themselves off from Roman influence must be taken in only a qualified sense. No people entirely cut off from exterior influence has ever attained any considerable advancement in what with us goes by the name of civilization. It may be that by civilization, we mean our civilization; but at any rate, as we use the term, civilization only exists to-day in those regions to which it has spread, and cannot be said in any instance to be indigenous. In this sense it may reasonably be claimed that the civilization in the British Isles, spreading from them over all parts of the world to which English speaking people have




penetrated, came from Rome. And in the same sense the civilization of Rome came from Greece, and that of Greece from some remote fountain head. All I mean to say is that the language, the laws, and the institutions of the Anglo-Saxons were indigenous with them, and were not subjected to the Roman influence until they had attained such definite individuality that they remained Teutonic, and did not become Latin; and this is especially noticeable in regard to the system of law. The Common Law, which is simply the development of the customary law of the Anglo-Saxons in England, has remained to this day a system wholly distinct from the Civil Law and the only system which has thus completely preserved its individuality, so that in the whole civilized world there are simply these two legal systems.

Each of these systems has had its course of development, during which it attained maturity and stability of form. The Civil Law was originally simply the customary law of the Roman city, symbolized to us by the so-called twelve tables, which, however, were evidently not the law itself nor any considerable part of it, but simply certain statutory modifications brought about by reason of some sort of social revolution in the Roman State. From this tangible beginning, as the result of many centuries of unconscious development and conscious change, it reached a definite form in the Code, the Digest, and the Institutes, prepared by Tribonian and his associates under the authority of the Emperor Justinian, reigning, by the way, at Constantinople, but representing the Latin race as it still existed in the Western world, though its political power was temporarily overthrown. From this definite form, still further developing, not longer, however, as the system administered by a political power, but now a part of the Roman civilization, it spread through Europe, suffered an eclipse with other enlightenment in the dark ages, revived again with the renaissance, and finally culminated in its most definite modern form in the Code Napoleon. The great Bonaparte may still be known as the ruler under whom a

system of law was perfected and given symmetrical shape, after mankind has ceased to admire or even to recognize his military genius.

The Common Law, as I have said, alone among the systems of civilized states, has a similarly complete and individual history. The laws of Alfred were simply the embodiment of the Anglo-Saxon customs. And from those customs, developing through many centuries, moulded, but by no means subverted, by the Norman conquest, grew up that endless chain of precedent which connects every principle of English law with the remotest antiquity. The system has felt the influence of the Civil Law, indeed, and there are some who rate such influence as fundamental and far reaching. Yet a careful investigation must show that it is superficial and not fundamental. As well claim that the prevalence of words of Latin origin in polite speech shows English to be a Latin tongue, as to claim that the use by learned writers of the thirteenth century of phraseology borrowed from the Civil Law shows that system to be the basis of English law.

Those who sought education for ecclesiastical office and preferment usually went to Rome, and there, as a part of their education, studied the Civil Law, so that the Canon Law, or the law of the church, was based almost entirely upon the principles of that system. Moreover, the system of equity which became a source of rights and, of remedies outside of those recognized by the Common Law, had also some roots in the Civil Law, as follows: The Norman kings and their successors down as late as the reign of Henry the Eighth, had, as one of the principal officers of state, an ecclesiastic as chancellor, whose function it was to serve as personal advisor, and, as it was said, keeper of the king's conscience. He had other official duties but it was in this capacity that he was personally related to the king, and it was in this capacity, too, that appeals for justice made to the king as the source of all justice and superior to the courts, were referred to him. Thus the chancellor was called upon to



decide questions not directly cognizable by the ordinary courts, requiring for their determination the application of principles of justice and equity not satisfactorily furnished by the Common Law. In this sense the chancellor did not administer the Common Law, for if the cause was to be decided by that system, there was no occasion for reference to him. And thus he had occasion to seek other guidance than that furnished by the rules of the Common Law courts. Such guidance he found largely in his conception of natural justice, but to some extent he found it also by reference to the more fully developed system of the Civil Law, and especially he found in the Canon Law, based on the Civil Law, forms of procedure more suitable for his purpose than those of the Common Law system, for he was confessedly to try cases to which the Common Law forms of action were not applicable, and he was to try them without a jury, which was essential to Common Law procedure.

It is difficult to say to what extent the system of equity growing up outside the law was indebted for its principles and procedure to the Civil Law. It is probable that it was the result of the needs and circumstances under which it was developed, to a much greater extent than of any extraneous influence; but to whatever extent the Civil Law did serve as a model or a source of equity jurisprudence, it has been far reaching in its results, for there is no question that although equity as a distinct system of rights and remedies is in name being contracted, and is likely to entirely disappear, yet, in fact, its benign principles have permeated every branch of the law, and both as to pleading and as to remedies, the law itself has been enlarged and ameliorated to give that recognition of rights and those convenient remedies, which for a long time could be had only in courts of equity.


The law of England became indebted to the Civil Law in still another way. Jurisdiction of maritime affairs was exercised by the Court of Admiralty, and as commerce was originally carried on most extensively by states and cities

recognizing the Civil Law, it was natural that in the admiralty court those principles should be followed, and the rights and the remedies should be in accordance therewith; so that to this day, jurisdiction of the admiralty courts is administered in accordance with Civil Law doctrines.

It is worthy of note that Scotland still has a system of jurisprudence based upon the Civil Law, which is doubtless due to the prevalence at her court during the time of her independence of the French influence. Her civilization was later in development than that of England and she had not therefore, a system of jurisprudence of her own to oppose to that of the alien power, so that she was an easy conquest.


The loyalty of England to her own rude system of law, and her jealousy of the encroachment of a foreign system are well illustrated by the contests of the Common Law courts, first, with the ecclesiastical courts, then with the courts of equity, and finally with the admiralty jurisdiction. Typical of these was the long struggle for supremacy between the Common Law courts, represented by Lord Coke, the Chief Justice, and the Court of Chancery, presided over by Lord Bacon. The question was whether chancery could enjoin the enforcement of a judgment of a court of law. Coke had back of him the prejudices of the people, Bacon was supported by the favor of the king. The imperious and arbitrary disposition of Coke was pitted against the duplicity and the sycophancy of Bacon. Coke was vanquished, but he had aroused such antagonism to the supremacy of the Court of Chancery that its pretensions to control the actions of courts of law were kept within narrow limits.

Conceding all that can reasonably be claimed as to the debt of the Common to the Civil Law, it remains unquestionable that the body of the law regulating the rights of English speaking people was Teutonic in its origin, and has retained, throughout its long development, its integrity and individuality.



It is apparent, therefore, that wherever the political power or civilization of the Latin races has come in conflict with that of the English race, such contest for supremacy has involved also the question of the prevalence of the Civil or the Common Law. A system of law can no more be adopted from an alien source, than can a system of language or of political institutions, and wherever the English speaking people have penetrated and become dominant, there has the Common Law prevailed. The question, therefore, whether the Civil Law should extensively influence, or more properly speaking, should be an element, in the civilization of the region west of the Mississippi, was determined by the same influences which determined whether that region should belong to the French or the Spaniards on the one hand, or to the English speaking people, on the other. The solution of that question depended upon events as old as the contest in the forests of Germany between the armed legions led by Varus, and the German barbarians, yet unchristianized, under their hero, Herman, or Arminius; upon whether the Angles and the Saxons should be successful in overthrowing Roman civilization in the south of England; whether the French and Spanish power should hold the discoveries and settlements made by De Soto and La Salle and Marquette, and all those daring explorers, who ascended the St. Lawrence, explored the great lake region, penetrated to the Mississippi, both at its mouth and at its source, and circumnavigated, as it were, the English settlements on the North American continent. That question depended upon the issue of the French and Indian war, and finally was determined by the concession to the United States of the territory covered by the Louisiana Purchase, and its settlement by emigrants from the English colonies.

* The exact settlement of the question may be easily indicated: So long as Louisiana and the region claimed by reason of the French and Spanish discoveries and settlements belonged to France or to Spain, it may be said to have



been under the dominion of the Civil Law.¹ When by the Louisiana Purchase in 1803, the United States acquired jurisdiction over this region, it was divided into two parts, the Territory of Orleans, embracing, substantially, the present State of Louisiana, and the District (afterwards called Territory) of Louisiana, embracing the balance of the purchase. For the southern of these territories a government was provided by act of Congress, similar to that for the Territory of Mississippi, which was itself on the plan set out in the Ordinance of 1787 for the government of the territory northwest of the Ohio river, and to which reference will be made hereafter. Indeed, the beneficial provisions of the Ordinance of 1787 for the protection of the white inhabitants

¹ That this system of law not only prevailed in the settlement at the mouth of the Mississippi but extended over the whole region as far as any system of law can be said to prevail in a territory largely unoccupied and ungoverned, is shown by an incident of great historical interest in this connection, for an account of which I am indebted to Hon. T. S. Parvin, of this city, who became cognizant of the transaction as clerk of the United States District Court for Iowa, in which the facts were shown for the purpose of establishing a title. After the cession of the region covered by the Louisiana Purchase was made by France to Spain, and before its recession to France and purchase by the United States, a grant was made (about 1790) by the Spanish government to one Louis Honore Tesson of a tract of land situated at the head of the rapids of the Mississippi above where Keokuk now is, and forming a part of the present town of Montrose, in Lee county, Iowa. At this time the region was a part of the province of upper Louisiana, with capital at St. Louis. A creditor of Tesson at St. Louis sued him in the court there, and getting judgment, proceeded to cause levy to be made on this tract of land. The officer of the court went to the premises, took therefrom a spadeful of earth to represent the soil, a twig from an apple tree to represent the improvements, and an old kettle to represent the goods of the owner, and conveying these to St. Louis in a pirogue proceeded to sell the property by means of these emblems thereof, according to the formalities of the Civil Law. Proclamation of the sale having been made in front of the cathedral after high mass on three successive Sundays, on the fourth Sunday the property was struck off to Pierre Choteau the creditor, one of the early pioneers of St. Louis. A copy of the deed transferring the title under this judicial sale was introduced in the Federal Court in this State to establish the title thus acquired. Here we have, then, a judicial record of the fact that the Civil Law was once in force in what is now called Iowa.

in their rights as citizens and participants in a free government were directly extended to this territory as they had already been extended to the Territory of Mississippi, thus assuring to them trial by jury, the writ of habeas corpus and the elective franchise, but, alas! the guaranty of exemption from the institution of slavery, which the Ordinance of 1787 had given the citizens of the Northwest Territory, was expressly denied.

For the northern portion a simpler government was provided, with capital at St. Louis, and for judicial purposes it was annexed for a short time to the Territory of Indiana, with capital at Vincennes, lately organized (on the admission of Ohio into the Union) out of the Northwest Territory. Afterward it was given a separate judiciary.

In the statutes of the United States for the government of these two territories it was specially provided, however, that the laws in force when the acts took effect should continue in force except as they should be inconsistent with such acts, or should be subsequently modified or repealed. By this language it was evidently intended that the Civil Law should continue to be the system of law for this region, except so far as modified by the introduction of jury trial, habeas corpus, and a republican form of government. It was specially provided as to the Territory of Orleans that the provisions of the Ordinance of 1787, relating to estates and descent of property, should not be applicable, thus leaving in force the Civil Law as to real property.


In this Territory of Orleans which subsequently, on its admission, became the State of Louisiana, the Civil Law was expressly recognized by the adoption in 1808 of a Civil Code, substantially embodying the Code Napoleon, which had gone into effect in France in 1804 and had already been adopted, or was soon afterwards adopted, in the Netherlands, Spain, and Italy. Some modifications, due to the embodiment of laws introduced by Spanish authority, were made, but in the main the Code Napoleon remains to this day the basis of the juris-



prudence of the State of Louisiana relating to civil affairs. As to criminal law, the principles of the Common Law were introduced, entirely superseding those of the Roman system, and as already indicated, jury trial, even in civil cases, and the proceeding by habeas corpus were also introduced from the Common Law.

After the southern territory was admitted into the Union under the name of Louisiana, the northern territory was reorganized (1812) as the Territory of Missouri, and in this statute there was a still more complete embodiment of the principles of the Common Law and of a republican form of government. Indeed, nearly all the guaranties of rights and liberties found in the Ordinance of 1787 and in the Constitution of the United States were expressly made applicable to this territory, and it was provided that judicial proceeding should be according to the Common Law and the laws and usages in force in the said territory. By a territorial act (January 19, 1816, Territorial Laws of Missouri, Vol. I. page 436), the Common Law of England was adopted as the "rule of decision" so far as not in conflict with the "laws of this territory." To what extent these last provisions substituted the Common Law for the Civil Law it would be difficult to determine. The act of the legislature evidently contemplated the introduction of the Common Law, so far as not contrary to the Territorial statutes, and this system was doubtless thus extended over all the region embraced in the Territory of Missouri as then organized. As we shall immediately see, however, the Common Law was introduced in a more unequivocal way over that portion of this territory north of the present State of Missouri.

From 1820, when the State of Missouri with its present boundaries was admitted into the Union, the territory north of it remained without government until 1834, when that portion of it east of the Missouri and White Earth rivers, including, therefore, the present States of Iowa and Minnesota and a great part of the two Dakotas, was made part of the



Territory of Michigan¹ which then extended to the Mississippi river. The Territory of Michigan, as a part of the Northwest Territory, was subject to the Ordinance of 1787, and by this incorporation into the Michigan Territory what is now Iowa came directly and explicitly under this ordinance, the provisions of which, as has already been seen, were largely, although not completely, embodied in the laws governing the territories of which it had previously formed a part; and the Ordinance is therefore of interest to us because not merely indirectly but in the end directly, it was the groundwork upon which our state government was organized, and the state admitted into the Union.

It is proper to refer more fully, therefore, to the Ordinance of 1787, "for the government of the Territory of the United States, Northwest of the Ohio river," and it may at once be designated as one of the noblest works which the legislative genius of the English people has ever produced. It embodies those guaranties of liberty, equal representation, judicial procedure according to the Common Law, and the general protection of the law of the land, the inviolability of contract rights and the rights of habeas corpus and trial by jury, which form the characteristics of republican government on American soil. It will be noticed that it was adopted by the Congress of the Confederation before the Federal Constitution went into effect, but the convention which framed the Federal Constitution was in session at the very time of the adoption of this Ordinance and undoubtedly it is to be looked upon simply as the forerunner and first embodiment of those principles which were already being discussed and incorporated into the Constitution itself.

Thus it was, then, that the territory now constituting the State of Iowa, first by the incorporation with the Territory

¹ Act of Congress of June 28, 1834, 4 Stat. at Large, 701, which gave to the inhabitants of the annexed Territory the same "privileges and immunities" and subjected them "to the same laws, rules, and regulations, in all respects, as the other citizens of Michigan Territory."

of Michigan, subsequently as a part of the Territory of Wisconsin after the State of Michigan was admitted into the Union, finally as a Territory by itself, and then as a State, inherited by definite provisions the Common Law of England.¹

But these technical provisions of Congressional enactments, interesting as they may be, are not the foundation of our right to the Common Law. The prevailing system of law for a people is determined rather by the nationality of that people than by any proclamation or code of legislation. The portions of the Louisiana Purchase settled by the French and Spaniards retained the Civil Law because it was the law of the people. Had the emigration into the purchase continued from French and Spanish sources the Civil Law would undoubtedly have spread over the whole region. But as a matter of fact the tide of emigration to this new country was not through Louisiana from France and Spain, but was from the English colonies to the east, and those emigrants brought with them the Common Law. That our peculiar legislative history is not the fundamental cause of the prevalence of the Common Law here is illustrated by the cases of Kansas, Nebraska, Colorado and all the states formed out of portions of the Louisiana Purchase west of the Missouri river over which the Ordinance of 1787 was never extended, but where the principles of the Common Law have prevailed without doubt or question. It was just as inevitable that the proceedings of the courts for such a people should be in accordance with the Common Law and not with the Civil Law, as that the language used by these courts in their proceedings should be the English language and not the French or Spanish. The people settling these regions and bringing them within the bounds of civilization and government took the Common

¹ In tracing the legislative history of the territory embraced in the State of Iowa I have been greatly aided by, and have largely relied upon, an article entitled "Historical Bibliography of the Statute Law of Iowa," by Hon. T. L. Cole, of Washington, D. C., in the Law Bulletin of the State University of Iowa, Number Two.

Law under the bows of their covered wagons just as unconsciously and certainly as they took the Yankee, or the New York, or the Pennsylvania brogue, and the belief in civil liberty, and the conviction that this was to be a mighty country. Had the emigration come from the Latin population pouring into Louisiana, the history would have been different, as indeed it would have been, had Varus overcome Arminius, or had the Saxons not invaded Great Britain, or had England instead of France been defeated in the great contest for the regions north and west of the original English colonies.

Thus it was, too, that the Common Law was carried into the regions acquired from Mexico, so that in Texas and in California the law is not that form of the Civil Law which prevailed there by inheritance from Spain but is as pure and complete an embodiment of Common Law principles as is found anywhere within the limits of the United States. The only monuments of the previous existence of Mexican laws and institutions are the titles to lands derived through the old Spanish and Mexican grants. In Florida where the Civil Law was introduced by the Spanish, it was specially provided by legislation, on the admission of the state into the Union, that the Common Law should prevail. In every state of the Union, except Louisiana, the Common Law has been recognized as the system which the people brought with them, or adopted as that best suited to a republican form of government.

It would seem that in general there has been a natural pride among the English speaking people in America, that they have the Common Law. But the bitterness of the struggle for Independence, and of the subsequent struggle in the War of 1812 for recognition as a power entitled to respect among the civilized nations of the world, has sometimes led to an attempt to disclaim the inheritance of the English judicial system. Nowhere, so far as I know, has there been any inclination to resent the adoption and recognition of the Common Law as such. But in respect to parliamentary modifica-

tions of the Common Law, especially such modifications as were made during the colonial period, there has been at times a strong effort to reject them entirely. Thus in several states it been provided, either by constitutional or statutory enactment, that the laws of England or the decisions of its courts shall not be recognized or cited, and an early territorial legislature of Iowa enacted a statute declaring that no statutes of Great Britain should be recognized in this territory, - a foolish piece of bravado, which as the court of Iowa pointed out, would, if made effectual, deprive us of all those ameliorating statutes which were so instrumental in changing the Common Law from the judicial system of barbarous times to a system applicable to a civilized people, a result which the court was able to avoid by a most ingenious and satisfactory use of the power of judicial construction.¹ In New Jersey, Pennsylvania and Kentucky it was enacted that no decision or treatise by a British judge or author, made or published subsequently to our independence, should be cited in the courts, and indeed in Kentucky it was only the influence of Henry Clay that prevented the passage of the resolution in such form as to exclude the citation of the decision of any British tribunal or the treatise of any British writer.² That this attitude was the result of temporary irritation and not of a settled antipathy to the Common Law as a system is proved by the fact that Blackstone's Commentaries on the Laws of England, first published in 1765, were constantly cited before, during and after the Revolution, in the courts of America, and attained, it is said, a larger sale during those years in the American colonies than they had in England.

It may not be uninteresting, in conclusion, to notice, briefly, the essential differences between the Civil and the Common

¹ The court decided that statutes of Great Britain meant statutes passed subsequently to the Union between England and Scotland (1707) and not statutes passed prior to that date. *O'Ferrall vs. Snodgrass*, 4 Iowa, 381.

² McMaster's History of the People of the United States, Vol. III.

Law, in order that, if we should see fit to give ourselves to a somewhat trite, but still fascinating, speculation as to what might have been, we may know whether we ought to regard it as a great fortune or a great misfortune that this magnificent valley, which is destined to become the most thickly populated portion of our country, has fallen under the dominion of the latter and not of the former.

I think it must be said frankly that the Civil Law is the product of a higher civilization than that under which the Common Law has been developed. Perhaps we might not agree in the use of the term "civilization." But I take it that no unprejudiced person will claim that there is yet so high a state of enlightenment and advancement in the arts and sciences, in literature, in the amenities of life, and in luxury, among the inhabitants of Great Britain or of the United States as among the educated classes of the European continent. Certainly in the United States, where people claiming to belong to the best classes participate in the atrocities of lynch law, and where the newspaper press either condones or openly applauds such outrages, no great claim can be made to a high state of civilization. But if I am using civilization in the correct sense, then it must be said that it is a self-limiting process: that it tends to thwart its own growth, to sap its own vitality, and that the civilization of the future will not be with those peoples where it has now reached its highest point. Indeed, I think it takes no strongly prophetic eye to see the prospect, at least, that in the future some Slavic or other race, now deemed little better than barbaric, will have outstripped not only the Latin, but the Teuton as well, in the struggle for ultimate supremacy. The race of the finest nerve is not likely to be that of the longest endurance.

And yet, because when the Civil Law first came into contact with the Common Law, the one was the system of a high civilization while the other was the system of men yet little better than savages (for I take it that the man of Shakespeare's time even, was only civilized on the surface, and for

special occasions), we are not necessarily to yield to the assertions of those who claim such great supremacy for the Civil Law. It must be remembered that the Roman system has developed no new principles in centuries while the Common Law as we know it has been practically made in the last two hundred years. It is true it can trace its precedents back to Edward the First, but no decision rendered prior to the time of Elizabeth can be counted as of anything but historical value, and, indeed, in the citation of cases for practical purposes no one dreams of going back of the time of Blackstone, a period of only a century and a quarter.

As an illustration of the higher civilization embodied in the Civil Law as compared with the Common Law, there would be general unanimity, I think, in referring to the condition of married women under the two systems. I say emphatically, married women, for though it is often assumed that by reason of her sex, woman as such is by the Common Law degraded and wronged, yet the fact is that the Common Law has always recognized the perfect equality in property rights, in power to make contracts, in the vindication of her liberties, and the protection of her property between the unmarried woman and the man. The unmarried woman, under the institutions of England, which are still largely prevalent in the United States, is not entitled to the elective franchise, nor to hold public office, but those are mere political privileges having no relations to her civil rights. It was only as an incident of marriage that by the Common Law, the woman lost her power to own or control property, to make contracts, or to bring suits in the courts. But it must not be forgotten that with these disadvantages, she had a total exemption from liability under her contracts, and was in many ways granted immunity from the burdens of legal relations. As contrasted, however, with this inequality in the condition of the married woman under the Common Law it is usual to refer to the doctrines of the Civil Law as illustrating a higher appreciation of her intelligence and legal capabilities. By that

system in its present form, she may own property independently of her husband, she may make contracts, and indeed, she is in most respects in the same legal position as a woman unmarried. But this situation is not due to any inherent principles of the Civil Law, indicating a higher reverence and respect for the married woman. By the earlier Civil Law, she became absolutely the property of her husband, and everything she had became his in his complete individual right. She passed under her husband's hand by marriage, as completely as a chattel passed under his hand, when he made a purchase of it and paid the price. Indeed, the original theory of the Civil Law with reference to the entire domestic relations was that the head of the family had over all its members, including his wife, his sons, whether of age or not, and their families, the most absolute and despotic power, a power extending to the control of the entire family property, and the personal supervision of every member. Advancing enlightenment ameliorated these laws, and finally brought about the present independence of married women. The same amelioration has been brought about by advancing civilization, although at a later period, in the Common Law, and to-day, there is probably no state in the Union in which the rights of married woman to her property, to her personal liberty, to her freedom from control are not as complete as they are in countries recognizing the Civil Law.¹

The system of pleadings, or written presentations of the claims of the respective parties, prevailing in the Civil Law, may be considered as quite superior to pleadings at the Common Law which involved a great technicality and nicety of

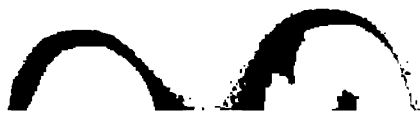
¹ It is doubtful whether the amelioration of the Common Law as to married women's rights was due in any way to the Civil Law. In Mississippi, where one of the first statutes on the subject was passed in 1839, I think some said the change was adopted from the laws of the Chickasaw Indians among whom there was perfect equality among the sexes, whilst others attributed the passage of the statute to the efforts of a member of the legislature who was the suitor for the hand of a rich widow whose property he wished to exempt, after his marriage, from liability to be taken for his debts.

statement, and were calculated to exhibit the ingenuity of the attorney in concealing the facts upon which he would rely at the trial, rather than in enlightening the opposite party or the court as to the exact nature of the matter before it. On the other hand, in the Civil Law the system of pleading involves a statement of the material facts upon which the party relies, and which he expects to prove; and such a method of statement is advantageous, in that it may be made to present, by mutual eliminations, only the controverted questions, so as to develop the very point on which the parties really differ. It is the advantage of this method of pleading that has led to its adoption in the Canon Law, in Equity, and in Admiralty, as the proper method of presenting to the court, which is to pass on the whole case, without the assistance of a jury, the very questions for its decision. But in this comparison, we are after all, setting off the Civil Law in its highest state of perfection against the Common Law in its cruder state, for the development of the Common Law, both in the United States and in England has led to the universal adoption of a system of pleading, not greatly different from that of the Civil Law, and constantly tending to become more like it, in which the contentions of the parties are fully set out, and the very facts on which they rely are clearly stated, and it is doubtful whether at this time there is any material difference between the methods of stating facts in the two systems as perfected. It may frankly be admitted, I think, that lawyers are going even beyond the principles of the reformed or code pleading, in stating their facts, and in approaching, or even surpassing the prolixity which the Civil Law has always permitted.

The substantial difference between the Civil and the Common Law in the matter of procedure, consists in the mode of trial. By the Civil Law, all the questions in controversy have usually been left to the judge for decision, while by the theory of the Common Law, still generally preserved, questions of fact are submitted to the determination of a jury, composed of

persons not learned in the law, nor especially trained for the discharge of their functions, but simply the peers and fellows of those whose rights they are to determine. The history of this peculiar feature of the Common Law need not here be discussed, nor need its relative merits or demerits be considered. Suffice it to say that on the question of whether the jury system should be modified or abolished, there is now the greatest diversity of opinion, and it is likely that in all of the Common Law countries, some change which shall obviate the most serious objections to the jury trial will soon be introduced. The advantages of the Civil Law method of trial are recognized with us by adopting it in the equity courts. But the advantages of the Common Law system of trial by jury are also recognized by the adoption in European countries to a limited extent, of jury trial in criminal cases.


But coupled with this Common Law method of trial, must be considered, also, another feature which is its great and most marked peculiarity, and that is its rigid adherence to precedent. No other characteristic of the system has brought upon it such severe criticism, animadversion and ridicule. The lawyer, under this system, is represented as a machine, devoid of moral sensibility, searching merely for precedents, which he may by ingenious devices pervert into instruments for doing injustice. The judge is regarded as a stickler for technicality, anxious to find some ancient rule or forgotten precedent, in accordance with which he may deny to parties their rights. While in opposition to this system of technicality and blind following of precedent is set up an ideal system in which the lawyers ask only that justice may be done, and the judges following the dictates of their own consciences and entirely emancipated from any other control, seek only to attain moral right. A distinguished judge, whose lasting monument it is that he reduced to form and definiteness the fluctuating principles of equity once said that he should be sorry to have it understood that the rights of a party in his court were to be determined by the size of the



judge's foot, meaning to express thereby a great truth, which has been too little recognized in determining the expediency of a judicial system, that not any judge's personal peculiarities, or his individual opinions as to right and wrong, not the size of his foot, nor the size of his conscience, nor the strength of his judgment, nor the bias of his mind, should determine the rights of parties, but some fixed, definite, certain, reliable system of rules and principles, precedents you may call them if you will, in accordance with which decisions will be made, decisions which shall, therefore, be as free as the result of human action can be from the variations due to the personal element. It is a distinguishing merit of the Common Law that it has eliminated so far as possible from the decision of legal questions the personal equation. And in order to more effectually accomplish this result, so far as the law itself is concerned, it has vested those matters which are peculiarly subject to varying and uncertain opinion, that is, the facts in the case depending upon the credibility of witnesses, and all such elements of uncertainty, in a separate tribunal, the jury, so that the judge is left as the priest to a formal system, which prescribes to him fully his duties, and leaves in him little discretion or power to exercise individual judgment.

The theory of the Common Law is that stability and certainty are, on the whole, better than the fluctuating rule of abstract right. Indeed, it is astonishing to find how few questions can be decided as matters of abstract right, and how greatly preponderating is the number in which the common conscience would decree that it is the law which makes the right.

As opposed to this system of precedent in which each case is decided by analogy to other cases, the Civil Law system is built up on abstract principles and general theories. It, too, was originally founded on a body of precedents, but the precedents were the theoretical opinions of learned men, not chargeable with any special duty to the parties in the controversy, giving their views on hypothetical cases. Now it



may as well be said here, that no branch of science or scientific knowledge has made any true advancement, or attained from the present age any substantial recognition, which has been developed by theoretical reasoning. We recognize only those things as a perfection of our knowledge which are ascertained by the investigation of facts. We pursue the deductive method, whether in natural science, in metaphysics, in politics, or in history. We search carefully, even minutely, for the particular facts, and from them, cautiously, and with hesitation, we draw our conclusions. Deduction is not exclusive of induction, nor ever can be, but the basis of our knowledge is deductive, and it is with caution and distrust that we make generalizations.

Thus it is that the the methods of the Common Law are after all more consonant with our modern civilization and scientific theories than those of the Civil Law. And thus it is that the Common Law has developed, and as I believe, without question will develop, into a broader, more substantial, more reliable and more adaptable system of jurisprudence than can ever be evolved from the Civil Law system.

And as a system for a free people, our Common Law is pre-eminently entitled to preference. Mistakes of the jury do not shake the confidence in the integrity of the judiciary. The fact that the judge is administering a system over which he has no control, and is applying rules which give him no discretion in the exercise of his judgment, relieves him from personal accountability for the result, though it may seem a hardship to the suitor. And if we compare that great respect for the law which is the peculiar characteristic of English speaking people, and their confidence in the courts, which is manifested in the peaceful acquiescence in the exercise by them of higher authority than that of the executive or legislative branch, an authority so high that it may overthrow the executive or legislative, in order to maintain the law, I say, if we compare this respect for the law and courts, prevailing uniformly among English speaking peoples with the disrespect

and distrust which is felt toward the judge in France, who is looked upon as a mere functionary of the government, sent out from the central power to execute his own arbitrary will, and generally believed to be in league with the other officers of the government in the maintenance of their authority, and to be so influenced by personal interests that a political opponent cannot have justice before him, we must frankly admit that the Common Law has established its claim to be the best system for a republican government.

The Common Law is at bottom a law for independent people who seek principally to be let alone. It is not a paternal system. Sumptuary laws in England -- I mean sumptuary laws in their proper sense, passed for the supposed protection of the subject against his own folly, not police regulations which prevent the pursuit of a business which is a nuisance to the public -- were not in harmony with it, though they were sometimes imposed by arbitrary monarchs. The development of the Common Law has been in the line of freedom of contract, and of protection to self-development.

In the light of these considerations, I believe we may say not only that the Civil Law has had but slight influence on the general civilization of Iowa, but also that it is our great advantage and good fortune that this influence has been so slight, and that we have been inheritors of another system better suited to our conditions as a people, and better fitted to promote our continued advancement in civilization and enlightenment.

THE IOWA HISTORICAL RECORD.

This is a quarterly publication. Its object is to collect and preserve in a permanent form, facts connected with the history of the state. Of the various classes of historical facts, it will be its special endeavor to publish,

1st. Such as relate to transactions of the early days, which are liable to be soon lost by the passing away of the participants.

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To aid in the accomplishment of this purpose, contributions are requested of those who have in memory any portion of the early history of the state, and those having material for history, or authentic manuscripts, will confer a favor by forwarding them to the Secretary.

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